

IMMIGRATION FOR SHARED PROSPERITY

A Framework for Comprehensive Reform

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Executive Summary

The American economy has become very dependent on foreign labor. Indeed, most of our workforce growth since 1990 has come from immigration, a trend that is expected to continue for at least the next 20 years. How these workers are employed, therefore, will have important implications for American economic health, as well as for national unity and social stability. This report addresses employment-based immigration, a small (15% of the total) but important and contentious part of immigration policy.

The problem

America's employment-based immigration system is broken. The programs for admitting foreign workers for temporary and permanent jobs are rigid, cumbersome, and inefficient; do too little to protect the wages and working conditions of workers (foreign or domestic); do not respond very well to employers' needs; and give almost no attention to adapting the number and characteristics of foreign workers to domestic labor shortages.

The last major immigration reform effort, the Immigration Reform and Control Act of 1986 (IRCA), was a failure. Since its passage, the number of unauthorized immigrants residing in the United States increased dramatically and now totals about 12 million, including about 7 million workers.

Illegal immigration has the advantage of being more responsive to employers' requirements, but has the disadvantages of being beyond the reach of either labor or immigration laws; subjecting foreign workers to grave risks, exploitation, and uncertain futures in the United States; and depressing wages and working conditions for all workers. Moreover, unauthorized immigration is unfair to immigrants waiting (sometimes for years) to gain legal entry, undermines the rule of law, and strengthens the conviction that the federal government is powerless to solve important national problems.

Effective employment-based immigration policy requires reforms to correct IRCA's defects, the most important of which are: (1) failing to develop a secure identifier which, in turn, is essential for effective border and internal controls, a work authorization system, and adjustment of status for millions of unauthorized immigrants; (2) making employers responsible for checking a variety of easily counterfeited identifiers, which companies lack the means (and often the will) to accomplish; and (3) accelerating unauthorized immigration because of ineffective controls and the failure to allow amnesty recipients to bring in their families.

Although our immigration reform framework focuses on the employment aspects of immigration, we fully support family reunification, which accounts for two-thirds of all immigrants and is the dominant purpose of U.S. immigration policy. Family

reunification is in the national interest because families are our most basic learning and support systems and therefore greatly facilitate the assimilation of immigrants into American life.

The framework

Our comprehensive immigration reform framework has five interrelated components: (1) the creation of an independent, highly professional commission—the Foreign Worker Adjustment Commission (FWAC)—to measure labor shortages and recommend the numbers and characteristics of employment-based temporary and permanent immigrants to fill those shortages; (2) a rational, operational control of our borders and effective internal tracking systems; (3) a fair and efficient worker authorization system complemented by more effective labor law enforcement; (4) a humane and practical system to adjust the status of unauthorized immigrants; and (5) the improvement, but not expansion, of our temporary indentured worker programs.

1. *The FWAC is needed* because our employment-based immigration system is far too rigid, political, and detached from the real needs of the American economy. An independent agency is needed to develop much better measures of labor market shortages, assessment methodologies, and processes to efficiently adjust foreign labor flows to employers' needs while protecting domestic and foreign labor standards. In order to give it time to prepare for its very important functions, we recommend that this commission be established in two stages: (1) create the structure and develop and refine methodologies, measures, and procedures to be recommended to Congress and (2) fully implement the system.
2. *Border controls and internal tracking processes* are necessary parts of an overall immigration control system. Border control alone is not likely to be sufficient—at best, no more than about 40% of unauthorized border crossers are apprehended. Increasing border resources has not done much to raise the number of apprehensions, but has pushed these migrants into ever more hazardous terrain and apparently has caused a larger proportion to settle in the United States with their families. But even completely successful border controls would not stop illegal immigration because an estimated 40 to 45% of these immigrants have overstayed visas—and this proportion undoubtedly would rise with more stringent border controls. Therefore, it is important to complement border controls with a much more effective internal tracking system. We have made progress with an entry identification system, but not with an effective way to determine whether or how many of the over 30 million authorized foreign visitors each year leave the country. The Department of Homeland Security (DHS) has proposed that the cost of an exit identification system be shifted to ocean and air carriers.
3. Since most unauthorized immigrants enter the United States to work or join family members who are working, *an effective work authorization process* is an essential

component of a comprehensive immigration system. Efforts to overcome IRCA's authorization defects have been largely ineffective. For example, the E-Verify system to determine if workers' Social Security numbers are valid has many known and unknown identity and document error problems, as well as privacy and due process concerns. The basic problems are: the absence of a secure identifier (which the social security card definitely is not and was not intended to be); the lack of a secure database; the absence of due process and privacy protections; employer control of the verification system; and discrimination against naturalized citizens and authorized workers.

One promising approach to overcome these problems would be to have a federal agency give workers a secure identifier with biometric data and a unique work authorization number for each new job based on individual PIN numbers issued by the federal authorizing agency. Employees would present the work authorization numbers and identifiers to their employers, whose sole obligation would be to verify the number with the authorizing agency. This system would give workers control of their personal information and give trained federal professionals, not employers, the responsibility for verification. The administrative burden of introducing this system could be reduced by phasing it in for new hires, job changers, and foreign workers authorized to work in the United States.

It would be better to design a new, fairer, and more effective system instead of expanding E-Verify, but that system has gained a fair amount of momentum and political support. If we cannot substitute a better system we must at least overcome E-Verify's serious deficits, especially to provide better due process, anti-discrimination, and privacy protections.

An important complement to a work authorization system would be much more effective labor law enforcement to protect labor standards. The present massive noncompliance with labor laws and the weakness of workers' collective bargaining rights make it very hard for employees to protect themselves, a necessary precondition for effective labor law enforcement. And immigration authorities should be prohibited from entering work places where labor disputes are in progress.

4. *Adjusting the status of unauthorized immigrants* is the most controversial and complex of our framework components. It is controversial because a vocal minority of Americans believe allowing unauthorized immigrants to remain in the United States would be rewarding lawbreakers. These critics would be on firmer ground if we had a good immigration law that was fair, transparent, and enforceable, none of which applies to IRCA. For many years before 9/11 unauthorized immigrants were justified in believing that if they got into the United States with a visa or crossed the border illegally—which was not hard to do—got a job, worked hard and stayed out of serious legal trouble, they would be able to settle in the United States. Indeed, the unauthorized immigrants' networks had a lot of official and unofficial support. It was not until after 9/11 that the United States became serious about immigration

enforcement and then it proceeded in an unfair, disruptive, and often unconstitutional manner.

Adjustment of status nevertheless is a very complex process, requiring a carefully orchestrated combination of carrots and sticks. The carrot is to encourage people to register to adjust their status with the promise of a path to permanent legal residence and citizenship. The stick for failure to register would be the high probability of deportation or being relegated to underground jobs. It is not in our national interest to drive more unauthorized immigrants deeper into the underground economy.

Adjustment of status is also tricky because in order to deter future illegal entry, the process must send a clear signal that there will be no future large-scale status adjustments.

Adjustment of status clearly is not likely to work very well without more effective border, internal tracking, and work authorization systems, all of which require a secure identifier. On the other hand, an effective adjustment-of-status process would strengthen the effectiveness of these other components by reducing the magnitude of the unauthorized population.

There are thus four reasons to adjust the status of unauthorized immigrants: (1) we do not have good immigration laws; (2) it would raise labor standards; (3) a roundup and deportation not only would violate American values of fairness and due process, but also would be impractical; and (4) it will be very hard to gain political support for or implement comprehensive immigration reform without it.

5. *We should improve, but not expand, temporary indentured foreign worker programs.* Although “guest worker” programs have a superficial appeal as a way to reduce temporary labor shortages, study commissions and labor market research tend to reject these programs the more they examine them—their long-run social, economic, and political costs far outweigh their short-run economic advantages. Experience also shows that these programs are very hard to discontinue, as we found with the bracero agreements to bring in Mexican farm (and some railroad) workers during World War II. This “temporary” program could not be discontinued until 1964—19 years after World War II ended. In fact, the bracero program helped establish the networks that subsequently accelerated the flow of unauthorized immigrants into the United States. Indeed, the bracero program complemented immigration enforcement: in the 1950s unauthorized immigrants were rounded up as part of “Operation Wetback” and “deported” into the bracero program.

It is not hard to understand why these programs are so popular with employers, even though they complain about the excessive bureaucracy, much of which is designed to prevent the programs from suppressing labor standards. These programs rarely prevent the suppression of wages and other labor standards because indentured workers are attached to particular employers, weakening their ability to defend their rights. If individual workers are fired they can be deported.

Sometimes, the indenture is reinforced by heavy indebtedness and the seizure of travel documents.

The abuses of indentured workers are well documented. Real labor market tests to certify labor shortages and the unavailability of domestic workers are rare. The workers' powerlessness is exacerbated by federal authorities' inability to audit employers to determine their compliance with either the law or the indenture agreements. Investigations by the GAO and other federal agencies have discovered heavy incidences of fraud.

Public support for indentured foreign worker programs often comes from employers' unsubstantiated claims of labor shortages. The proof commonly proffered by employers of indentured H-1B computer and other technical workers is the exhaustion of the available visas for the year on the first day they become available. This clearly is not evidence of a labor shortage, but of a strong demand for indentured workers who can be paid well below prevailing wages. While employers often argue that these indentured worker programs strengthen the competitiveness of American industry, it is well documented that both the H-1B and L-1 programs frequently are used by outsourcing firms learning U.S. industry techniques in order to send the work to other countries.

Our recommendations are designed to prevent these abuses, limit the period of indenture, and restrict the use of these workers to occupations the FWAC certifies have real, temporary labor shortages and there have been good-faith efforts to recruit domestic workers. Our recommendations also are designed to prevent the use of indentured workers for non-temporary jobs or to suppress wages and other working conditions and decimate labor market institutions. We also recommend ways to enable the indentured workers to protect themselves, as well as how to improve the administration of these programs through such means as adequate administrative resources and enabling unions and joint union-management committees to sponsor foreign workers.

CHAPTER 1

Getting Immigration Reform Right

Problems and opportunities

Congress' difficulty in passing immigration reform legislation comes as no surprise to those who have followed this issue over the years, especially the debates that led to the Immigration Reform and Control Act (IRCA) of 1986. Many of the factors that caused IRCA to fail are as prevalent now as they were in 1986. Diverse economic interests, personal biases, and political ideologies make it hard to build consensus for effective immigration policies. These complications are exacerbated by the paucity of reliable data and analyses about the magnitude and impact of illegal immigration on the American economy and society.

By the time the 1986 reform bill was amended enough to pass the Congress, it was very clear to immigration experts that IRCA would accelerate illegal flows into the United States, which is exactly what happened. Estimates of the number of unauthorized migrants in 1986 were between 3 and 6 million; today, estimates commonly range from 7 to 13 million (Passel 2006, 2).¹ And the networks that perpetuate these flows are much more institutionalized and therefore difficult to influence by public policy.

That said, however, immigration is not the problem: the United States is and will remain a nation of immigrants who have contributed greatly to the vitality, diversity, and creativity of American life. Immigrants are particularly important to the U.S. economy and have played a central role in our recent labor force growth. From 1996 to 2000, for example, foreign-born workers made up nearly half of the total labor force increase of 6.7 million. In a paper published by the National Center on Education and the Economy, Khatiwada, Sum, and Barnicle found that "47 percent of the increase of the nation's civilian labor force between 1990 and 2000 was due to new foreign immigrants, with nearly two-thirds of the growth in the male labor force" (Khatiwada et al. 2006, 3). Because there will be no net increase in the number of prime-working-age natives (aged 25 to 54) for the next 20 years (Aspen Institute 2002), the strength of the American economy could depend significantly on how the nation relates immigration to economic and social policy.

Illegal immigration, on the other hand:

- subjects migrants to grave dangers and exploitation;
- suppresses domestic workers' wages and working conditions (Kossoudji and Cobb-Clark 2002);²
- makes it difficult for policy makers to relate immigration to overall economic and social policies;
- perpetuates marginal industries addicted to a steady flow of low-wage, powerless workers;
- is unfair to people waiting to enter the United States legally;
- undermines the rule of law; and
- symbolizes the federal government's inability to address important problems affecting the national interest.

But the immigration policy problem is not restricted to the inability to control illegal immigration. Immigration laws and regulations do not do a very good job of either protecting authorized foreign or domestic workers or relating immigration flows to the needs of the economy. The issue, therefore, is not immigrants, but fixing our broken immigration system.

Because of its importance to America's diverse and rapidly growing Hispanic population, immigration also has significant *political* implications. Hispanics' political power is enhanced by their geographic concentration in areas where Democrats and Republicans must contend for national dominance, especially in the Southwest and Rocky Mountain West, but increasingly in other areas as well. This reality was factored into the political strategy fashioned by Karl Rove, which enabled George W. Bush to get almost 40% of the Hispanic vote—a relatively high proportion for a Republican. The Bush-Rove strategy was derailed, however, by nativist Congressional Republicans who adamantly opposed comprehensive immigration reform in favor of almost exclusive reliance on border security. As Bush and Rove feared, anti-immigrant Republicans generated strong Hispanic support for Democrats in the 2006 and 2008 elections; 66% of the Latino vote went to President Obama and helped turn a number of red states blue (Jordan and Eaton 2008), as happened in California under Republican governor Pete Wilson during the 1990s. These experiences demonstrate that resentment toward anti-immigrant sentiments is one of the few unifying issues for America's diverse Latino population.

How we address the immigration issue, therefore, will have important implications for social cohesion, democratic institutions, and the strength of American values of pragmatism and fairness. As will be discussed at greater length later, a punitive, anti-immigrant approach to immigration reform is not only divisive, but impractical as well.

Immigration reform has, in addition, become a very important issue for *unions*, most of which had, until 2000, opposed large-scale immigration and favored employer

sanctions to prevent the employment of unauthorized workers (Briggs, Jr. 2004). It soon became obvious, however, that IRCA's defects made employer sanctions a potent weapon against union organizing and labor law enforcement. If unauthorized workers attempted to organize or complained about labor law violations, employers would call the immigration authorities and have them deported. The U.S. Supreme Court compounded this problem by ruling that undocumented immigrants were not protected by the National Labor Relation Act's (NLRA) penalties against employers for discharging workers who support unions.³ The growing numbers of unauthorized workers, their willingness to join unions—especially those that worked with immigrant communities to meet these workers' needs—and immigration law weaknesses combined to cause the AFL-CIO to change its immigration policy.

The following resolution was overwhelmingly adopted at the 2000 AFL-CIO Convention:

The AFL-CIO proudly stands on the side of immigrant workers. The AFL-CIO believes the current system of immigration enforcement in the United States is broken and needs to be fixed. Our starting points are simple: Undocumented workers and their families make enormous contributions to their communities and workplaces and should be provided permanent legal status through a new amnesty program. Regulated legal immigration is better than unregulated illegal immigration. Immigrant workers should have full workplace rights in order to protect their own interests as well as the labor rights of all American workers.

The AFL-CIO immediately held a series of town meetings all over the United States to explain and implement this new policy. According to Harold Meyerson, since the AFL-CIO adopted its new policies, "...unions [have become] the most politically powerful champions that immigrants can claim" (Meyerson 2004, 182).

Finally, because of deep international economic and demographic integration, immigration has important *foreign policy* implications, especially for U.S. relations with Mexico, the source of most unauthorized migrants to the United States. In fact, for many years, Mexican policy has been based on the expectation of heavy migration to the United States. Migration provides Mexico a safety valve to compensate for that country's failure to provide adequate domestic jobs or social safety nets, and remittances from the millions of Mexicans living in the United States are second only to oil exports as a source of Mexican foreign exchange. Remittances also are the lifeblood of many rural communities and supplement Mexico's weak social support systems.

Given that country's slow growth and serious structural problems (poverty and inequality; corruption and political cronyism; low tax collections; poor education system; ineffective political checks and balances; inadequate infrastructure development; monopolistic control of key industries; restrictive business regulations; rigid, antiquated, and inefficient labor market policies and institutions; poor credit markets; and the limited capacities of governments at every level), without significant policy

changes it is unlikely that Mexicans will have adequate job opportunities anytime soon. Therefore, U.S. immigration policies have important implications for Mexican economic and political development, with significant positive or negative spillover effects for the United States.

Since past mistakes can provide lessons for more effective future policies, this paper will first explore the reasons for IRCA's failure, and conclude with an analysis of a comprehensive mix of policies that could serve the best interests of the United States and other countries, especially Mexico.

IRCA's defects

IRCA's main technical defect was the lack of a secure worker identity and work authorization system, without which all other control measures were less effective and often counterproductive. This reality was well known to participants in the immigration policy debates—both those who wanted tighter controls, who lost the legislative contest, and those who favored relatively open migration, who won. In connection with their work for the 1979-81 Select Commission on Immigration and Refugee Policies (SCIRP), Labor Department experts developed a work authorization process for new hires and job changers that would have made a federal agency, not employers, responsible for verification; the employer's only obligation would have been to verify an authorization number the applicant obtained from the appropriate federal agency. Because of opposition from an alliance of open immigration advocates and civil libertarians worried about a national identity card, IRCA opted for an array of easily counterfeited identifiers, permitting a fair amount of fraud, especially in the Act's employment and adjustment-of-status programs, thus accelerating the flow of unauthorized immigrants. IRCA also gave employers responsibility for verifying work authorization documents, a task they had neither the ability nor the will to perform.

To understand why employers lacked the will to screen unauthorized applicants, it is instructive to examine the tight bonds between them and undocumented immigrants. For hard-to-fill jobs, employers often prefer unauthorized immigrants to legal residents. This preference is due not only to immigrants' willingness to accept lower wages, but also because they are a more dependable supply of labor for these jobs and their limited options make them less likely either to leave or file complaints with government agencies about abuses. Very effective informal immigrant information and support networks thus give employers a dependable supply of labor.⁴

On the workers' side of the employment relationship, jobs that are unattractive to natives are not only much better than those available in their home countries, but also provide a measure of security for immigrants and their families, despite their illegal status. These networks are strengthened and perpetuated by community support groups, home country officials, employers' investment decisions, and labor market adjustments.

Myths strengthen the networks

1. Unauthorized immigrants only take jobs Americans won't take.

These tight employer-immigrant bonds are reinforced by public attitudes and myths, the most prominent of which is that unauthorized immigrants only fill jobs Americans won't take, an attitude used to justify illegal immigration by employers, immigrants, and their foreign and domestic supporters. The truth is that there are no such jobs: according to the Census Bureau's 2007 American Community Survey of more than 330 occupations, only two—"plasterers" and "graders and sorters of agricultural products"—have immigrant majorities, and natives make up more than 45% of both occupations. Like most enduring myths, this one has an element of truth; natives do tend to shun jobs that are undesirable because of wages and working conditions, and there may be few available natives where the jobs are located. But, as noted, once the strong employer-immigrant bonds are established, it is hard for even willing natives to compete for these jobs, thus appearing to confirm the myth.

Those who perpetuate this myth ignore other options that can be and have been used as alternatives to employing unauthorized migrants, including actively recruiting legal residents; rationalizing labor markets to facilitate the employment of domestic workers; improving management (which often is very bad in low-wage occupations, where the costs of inefficiency are shifted to workers through such practices as piece rates); introducing technology to improve productivity, as was done in California agriculture after the end of the bracero program in 1964; or, obviously, improving wages, benefits, and working conditions.

2. Unauthorized immigrants strengthen national welfare.

Another popular misconception is that illegal immigration is not so bad because its negative impacts on legal residents are small, and it improves overall national welfare. Again, there is enough truth to give this argument superficial plausibility. There are, however, several problems with this argument, one of which is the common practice among economists of equating the economic effects of illegal and legal immigration. For example, studies of the impact of refugees—who are legal residents, usually with more human and financial capital—have been cited as evidence of the beneficial effects of illegal immigration. Similarly, legal immigrants, who tend to have both lower and higher levels of schooling than natives, cannot be equated to unauthorized migrants with little or no formal education. It is significant that, controlling for other things, legalization improves immigrants' wages (Kossoudji and Cobb-Clark 2002).

If it were true that they take only jobs domestic workers would not take, unauthorized workers would have net positive effects on the economy. However, since workers who compete directly with these foreign workers are displaced and have lower

wages, they lose. Consumers, employers, and workers who are complemented by immigrants benefit from their employment. The problem for empirical economic analyses is to identify, measure, and net out the positive and negative impacts. Unfortunately, we do not now have acceptable data or methodologies to accurately evaluate the economic impact of legal or illegal immigration.

Economists therefore disagree about the impact of immigration on American workers. Some find little or no negative impact (Card 2005), while others report large and significant effects. For example, George Borjas, Richard Freeman, and Lawrence Katz found that in the decade before 1991, immigration contributed 15% to the decline in the relative earnings of high school dropouts (Freeman 2007, 51).

In a later, widely cited study Harvard's George Borjas found that between 1980 and 2000 immigration reduced wages for all native-born workers by an average of 3.7% a year, 7.4% for high school dropouts, and 3.6% for college graduates. Borjas also found that immigration reduced the wages of high school graduates by 2.1%, native-born Hispanics by 5.0%, African Americans by 4.5%, whites by 3.5%, and Asians by 3.1% (Borjas 2004, 5-6). Borjas concluded that it was the increased supply of labor, not their status that reduced wages. By contrast, Kossoudji and Cobb-Clark (2002) found that legalization alone raises wages by 6%. I believe the latter assessment is correct: legal status makes a difference.

Another widely cited empirical study, by Giovanni Peri and Gianmarco Ottaviano (2005), found that between 1980 and 2000, the same years studied by Borjas, immigration reduced wages for native-born high school dropouts by 2.4% while raising the wages of other groups by at least 2.5%. These authors do not deny that other things equal, an increased supply of labor reduces wages, but speculate that their findings suggest that immigration increased investment and economic growth, thereby creating opportunities for better-educated workers while reducing the wages for the lowest-paid workers who compete most directly with low-wage immigrants. For other workers the complementary effects outweighed the competitive effects and therefore boosted wages.

The most widely cited economist who minimizes the negative impact of immigration on wages is David Card, who used more selective data and different methods than Borjas. Card found that immigration into 300 metropolitan areas had a negligible effect on wages despite an 18% rise in the foreign-born population (Card 2005).

Displacement and labor market structures

Most economic studies of immigrant workers attempt to measure their impact on wages. However, if immigrants are substituted for domestic workers at the same wages, there would be no measurable wage effects. It therefore is useful to examine displacement as well as wages. Since workers tend to be segmented into non-competing groups, it also is useful to assess the impact of immigrants on young and minority workers who compete most directly with them. "They [new immigrant labor force] represent 65% or nearly two-thirds of the increase in the nation's entire civilian labor force between 2000 and

2005” (Khatiwada 2006, 11). “Unfortunately, a high share (50 percent) of this recent immigrant labor force growth is believed to be due to undocumented immigrants who have contributed to a growing informal labor market in the U.S.” (Khatiwada 2006, 12). The impact was particularly large for young native-born males (age 16 to 34), whose employment fell by 1.7 million between 2000 and 2005, while the number of young immigrant males increased by 1.9 million. The negative impact was greater for young blacks and Hispanics. These researchers also found that the employment of immigrants was accompanied by a deterioration of private labor markets toward more informal employment not covered by unemployment insurance, health benefits, formal information systems, and worker protections (Sum, Harrington, and Khatiwada 2006).

Conclusions

A further examination of this controversy between economists is beyond the scope of this paper, but my experience, as well as my studies of the impact of immigration on labor markets, leads to several conclusions (Marshall 1984; 1991):

1. Much of the controversy among economists is over data and methods. In my view, while the empirical studies are useful first approximations, their dependence on framing and behavioral assumptions give them limited utility for policy purposes. This is particularly true of national studies, which are less likely to control for many of the institutional and dynamic relationships influencing immigration and its impacts. Moreover, despite some improvements, we have limited accurate data on legal and illegal immigration. There are, in particular, few longitudinal data that follow the same workers through time. Analysts therefore make mistakes when they reach longitudinal inferences from cross-sectional data. For example, data comparing the impact of immigrants on native employment and wages in metropolitan areas at different dates must account for inter-area migration. This is so because competing low-wage legal residents often avoid or leave areas with heavy influxes of illegal immigration, while non-competing higher wage legal residents tend to move into those areas.⁵ Any inter-city study that did not account for these migrations could conclude, erroneously, that unauthorized migrants had no negative—or even had positive—effects on native workers.
2. Labor market conditions clearly make a difference. The negative immigration effects for natives are greater when there is widespread joblessness among native workers who, for reasons noted earlier, are not able to compete with immigrants. On the other hand, robust job growth could create real shortages that cause the positive effects of immigration to outweigh the negative.
3. The evidence also suggests, however, that employers’ preferences for undocumented immigrants can be influenced by the effectiveness of law enforcement. Between 1986 and 2005, immigration enforcement was relatively lax, causing employers to feel fairly secure in hiring unauthorized workers. However, stepped-up

enforcement since 2005 has led Texas meatpacking plants to replace the deported, unauthorized immigrants with refugees. For these jobs, the employers continue to prefer workers with limited options, a condition not restricted to undocumented immigrants.

4. Whatever the limitations of empirical research, well-established economic theory predicts that natives whose work is *complementary* to that of immigrants (e.g., managers or skilled workers who can cede low-wage work to immigrants and devote more time to higher-wage work or who can pay immigrants lower wages than natives for doing the same work) will benefit from immigration, but that the wages of those workers who *compete* directly with immigrants will be reduced. Because of their bimodal education distribution, immigrants compete most directly with natives in high- and low-wage occupations. Immigration policy therefore should minimize wage competition and maximize complementarity.
5. Although the magnitude can be debated, most economists find that illegal immigration reduces the wages and dilutes the quality of jobs for low-wage domestic workers who are most likely to compete with the immigrants (Massey, Durand, and Malone 2002, 154). It is true, of course, that immigration is not the only factor depressing these wages, but it is a significant one, especially for high school dropouts, whose real wages fell by 17% between 1979 and 2007 because of immigration, globalization, technological change, the decline of private-sector collective bargaining, and weaker worker protections (Mishel, Bernstein, and Shierholz 2008, 163).
6. Because many legal immigrants have higher levels of education than natives, they could displace and reduce the earnings of highly educated workers (Hira 2007). The impact on knowledge workers is intensified by the globalization of labor markets and low-cost information and communication technology, which greatly facilitates the outsourcing of this work. It therefore is not surprising that the real wage growth of college-educated workers has stagnated since 2000.⁶
7. Fortunately, we do not have to resolve the dispute among economists over the impact of immigration in general, or unauthorized immigration in particular, to develop policies that protect domestic and foreign workers and maximize the positive impacts while reducing the negative. If foreign workers are admitted where there are certified shortages of domestic workers and they do not compete with or displace domestic workers, they will have positive effects. We also believe, however, that the independent Foreign Workers Adjustment Commission (FWAC) we recommend should improve the data and methodologies to better measure the impact of immigrants on individual and national welfare.

Labor market flexibility

Some economists argue that illegal immigration has positive economic benefits because it improves labor market flexibility. Gordon Hanson, for example,

...concludes that there is little evidence that legal immigration is economically preferable to illegal immigration. In fact, illegal immigration responds to market forces in ways that legal immigration does not. Illegal migrants tend to arrive in larger numbers when the U.S. economy is booming (relative to Mexico and the Central American countries that are the source of most illegal immigration to the United States) and move to regions where job growth is strong. Legal immigration, in contrast, is subject to arbitrary selection criteria and bureaucratic delays, which tend to disassociate legal flows from U.S. labor-market conditions....[I]llegal immigration has a clear economic logic. It provides U.S. businesses with the types of workers they want, when they want them, and where they want them. If policy reform succeeds in making U.S. unauthorized immigrants more like legal immigrants, in terms of their skills, timing of arrival, and occupational mobility, it is likely to lower rather than raise national welfare. (Hanson 2007, 5)

Hanson concedes that, despite these economic benefits, high levels of illegal immigration weaken the rule of law and the government's ability to enforce labor market regulations "...and relax the commitment of employers to U.S. labor market institutions and create a population of workers with limited upward mobility and an uncertain place in U.S. society" (Hanson 2007, 4).

Our perspective differs markedly from Hanson's:

1. We are concerned primarily about the adverse effects of unauthorized immigration on workers, foreign and domestic. Workers' welfare cannot be neatly separated into economic and non-economic categories because labor markets are not like product markets—they involve people, who are not motivated entirely by material gains. Moreover, workers' earnings and conditions depend on their political power and social conditions. Workers who have limited political power and civic rights therefore have little ability to protect their interests. Legalization therefore strengthens workers' power to improve their conditions in the workplace and in the larger society.
2. We do not believe the composition of the American workforce should be determined entirely by employers' desire for cheap and vulnerable labor. We also reject low-wage competitiveness strategies that are neither sustainable nor in the best interest of most Americans. The conclusion that the nation gains from suppressing wages because employers can then increase investment, which we are told benefits all workers in the long run, is not good economic or public policy. Indeed, policies based on theories like this have caused declining real wages and growing inequality since the 1970s.
3. We also reject Hanson's definition of a tight labor market as one where "the U.S. wages for those occupations are high relative to wages abroad" (Hanson 2007, 4). This definition implies that we should measure shortages on a global basis, which

is not very practical for policy purposes—we do not have the capacity to make policy for the rest of the world, or even for Mexico. Our measures therefore will relate to U.S. labor markets. If used as a policy guide, Hanson’s definition implies that immigration should continue until wages are equalized—which, as explained below, would not be good policy.

4. Hanson is correct in criticizing the inflexibility of current programs to admit temporary and permanent foreign workers. Our recommendations are designed to make these programs more flexible.

Economic competitiveness

The argument that immigration strengthens the competitiveness of the American economy thus depends on how competitiveness is defined. Many economists believe lower wages improve competitiveness because they reduce the prices and costs of American products, and therefore increase sales and investment—which, in the long run, benefits everyone. However, in a global economy, there is no guarantee that investments will be made in the countries experiencing the immigrant-induced wage reductions. And, as recent history has demonstrated, if globalization weakens workers’ bargaining power, increasing productivity raises profits while real wages are stagnant or falling (Mishel, Bernstein, and Shierholz 2008). While wage suppression is an easy option for employers, it is a losing strategy for workers, communities, and nations: there are always countries with lower wages. Moreover, in a high-wage country, wage competition implies lower and more unequal wages, which is exactly what has been happening in the United States since the 1970s. There can be little doubt that growing inequality will weaken democratic institutions, economic performance, and national unity.

It is true, of course, that in a competitive global economy, earnings for similar workers tend to converge. The policy issue, however, is whether convergence is achieved by more rapidly rising wages in developing countries, which would benefit people everywhere, or lowering wages in high-wage countries, which will increase inequality and reduce wages for many workers, as well as aggravate national and international tensions.

A better alternative, suggested by the experiences of some East Asian countries, would be for all nations to compete through a high-value-added strategy of improving productivity, quality, flexibility, and innovation. Given this definition, immigration that reduces American wages and perpetuates marginal, low-wage industries runs counter to the kind of competitiveness we should encourage. Employment-based immigration policy therefore should give greater attention to increasing the flow of workers whose skills and education are in short supply in the United States.

CHAPTER 2

Proposals to Fix the System

The rest of this study outlines a comprehensive framework to reform employment-based immigration to significantly reduce the flow of unauthorized immigration, facilitate the legal flows, protect foreign and domestic workers from abuses prevalent in the present system, and better match the flow of foreign workers to U.S. labor shortages.

The context

Our framework for a more effective foreign worker program is based on several contextual considerations:

- A. Our focus is on the employment aspects of immigration, which account for only about 15% of U.S. immigrants: refugees account for about 20% and reuniting families for about two-thirds. We strongly support family reunification as the main goal of immigration policy. There are several reasons why family reunification is in the national interest. First, families strongly influence individual and national welfare. Families have historically facilitated the assimilation of immigrants into American life. Second, the failure to allow family reunification creates strong pressures for unauthorized immigration, as happened with IRCA's amnesty provisions. Third, families are the most basic learning institutions, teaching children values as well as skills to succeed in school, society, and at work. Finally, families are important economic units that provide valuable sources of entrepreneurship, job training, support for members who are unemployed, and information and networking for better labor market information.

It should be noted, however, that to some extent there are false distinctions between the family, employment, and refugee categories: most immigrants and refugees have families and many work. Projections of the need for foreign workers therefore must consider the employment effects of refugees and family members.

- B. Immigration reform should be a component of broader social and economic policies to promote shared prosperity in the United States and other countries. The United States' and Mexico's low-wage strategies do not benefit either country. We

are losing jobs to Mexico, which is losing jobs to China; the average Mexican wage is about 11% of the United States, and China's is 3% to 4% of the United States' (Krugman 2007). Wage competition implies lower and more unequal wages, which is exactly what the United States and Mexico have experienced since the 1970s. Rather than reducing or suppressing wages, a shared prosperity strategy calls for labor standards to maintain and improve wages and working conditions in the United States and other countries, including protecting workers' right to organize and bargain collectively; occupational safety and health and anti-discrimination protections; universal health insurance; social safety nets; improved and more equitable education and training; research and development; support for technical innovation; infrastructure development; and other measures to improve productivity and innovation.

A shared prosperity strategy has obvious implications for employment-oriented immigration policy. Such a policy would not allow immigration to depress wages and working conditions or to encourage marginal low-wage industries that depend heavily on substandard wages, benefits, and working conditions. A shared prosperity strategy also would give high priority to admitting immigrants to meet certified labor shortages.

- C. We should consider the effects of immigration reforms on immigrant source countries, especially Mexico. It is in our national interest for Mexico to be a prosperous and democratic country that is able to provide good jobs for most of its adult population, thereby ameliorating strong pressures for emigration.

Some commentators believe these migration pressures are so strong that the United States can do little to stem the flow. They also observe that migration not only relieves Mexico of excess workers, but that remittances from immigrants are an important source of foreign exchange and supplement Mexico's weak social safety nets. In this view, immigrants keep Mexico from being even more unstable than it already is. We have the following responses to these arguments:⁷

1. While it is undoubtedly true that more effective immigration policies would not stop unauthorized migration to the United States, they could greatly reduce it. To be sure, we have no experience or evidence that proves unauthorized immigration can be controlled because we have never tried comprehensive immigration policies like those recommended in this report, which assumes that our proposals could dramatically reduce the future flow of undocumented workers. Just as a recessionary U.S. labor market has reduced net migration from Mexico, so too would better enforcement of prohibitions against hiring unauthorized workers (Thompson 2008).
2. More effective controls won't necessarily halt immigration. The legal flows would be much larger than they are because of population momentum—with family reunification, the legalization of several million undocumented

immigrants could perpetuate a continuing future flow of people from Mexico and other source countries.⁸ And proposed legalization programs could result in increased numbers of immigrants, including 2 to 3 million agricultural workers and their families, whose employment probably would not be restricted to agriculture. Additional employment-based immigrants could be admitted to fill certified labor shortages.

3. Declining Mexican birth rates could reduce future pressures for emigration. In the early 1970s, for example, the average Mexican woman had 6.5 children; today, she has 2.2, just over the replacement rate of 2.1 children (Sedano 2008, 40).
4. Economic development likewise will affect the future rate of Mexican immigration. Outmigration typically increases rapidly during the early stages of economic development, when modernization displaces people from agriculture and other traditional labor-intensive activities, but subsides as development provides more jobs for people in their homelands (Hatton and Williamson 1998). Much of the emigration from Mexico in recent years resulted from economic development, accelerated by NAFTA, which displaced millions of Mexicans from subsistence agriculture and enterprises that could not compete in a global market. The nature and speed of a country's economic development seems to determine how long it takes to complete this outmigration cycle. If Mexico could follow the South Korean value-added economic growth pattern and provide an adequate supply of relatively good jobs for its people, the outmigration cycle could be shortened. In 1965 South Korea was one of the poorest countries in the world, with a per capita income of only \$150 a year and heavy outmigration. Thirty years later, South Korea had become a modern industrial economy with a per capita income of \$9,700, and its outmigration rate had fallen to virtually zero (Massey, Durand, and Malone 2002, 147-48). Early European emigration adjustment cycles were more than twice as long as South Korea's. Faster value-added development in Mexico therefore could dramatically reduce outmigration, while continued low-wage economic development could lengthen that cycle.
5. The United States therefore should support Mexican leaders who promote policies to achieve broadly shared prosperity. While Mexico has adopted some impressive macroeconomic and political reforms, much more needs to be done. It is particularly important to promote the development of independent unions and more effective labor law enforcement. The European Community provides lessons for promoting shared prosperity through a multinational fund to stimulate the development of low-wage countries like Portugal, Spain, Greece, and Ireland, thus avoiding the mass South-North migration expected from unification. The United States—and perhaps Canada—could use such a fund to leverage needed structural reforms in Mexico and other undocumented migrant source countries.

6. Finally, immigration policy should be research-based. Although much needs to be done to improve data and research on this important subject, we should base our policies on the best evidence we have now. We know, for example, that economic migration displays certain common patterns. One of these, noted earlier, is that outmigration occurs when economic development displaces people from their traditional livelihoods and they cannot find suitable alternative sources of income in their home countries. When they migrate, people tend to go where they already have connections, thus establishing self-perpetuating networks. These networks are initiated by a strong demand for immigrant labor in receiving countries, but they also provide income-earning opportunities for immigrants who provide goods and services to other immigrants in the networks.

As noted earlier, employers who have trouble filling jobs under conditions that domestic workers shun create a strong demand for immigrant labor. Moreover, immigrants initially are likely to be more satisfied with such jobs because they are better than those available in their home countries. Immigration also displays generational differences—second generations no longer compare with their parents' home countries and therefore are less satisfied with marginal, low-wage jobs. The attraction of jobs also depends on alternatives in the United States. For example, when economic conditions worsen, otherwise undesirable jobs become more attractive to domestic workers. And when stricter immigration controls disrupt the supply of foreign labor, employers are more willing to hire natives.

Immigration likewise tends to display other patterns. While people migrate for a variety of economic and non-economic reasons, most do not initially plan to settle in their new countries; they wish to acquire the resources for particular purposes and then return home (Massey, Durand, and Malone 2002). However, many immigrants' preferences change through time, causing them to acquire tastes and objectives in their new countries that cannot be satisfied in their home countries, especially since many home country cultures, goods, and services can be provided in their new countries. As a consequence, some immigrants decide to bring their families and settle in their new countries. These immigrant networks, trends, and support systems thus cause immigrant flows to:

acquire a strong internal momentum that makes them resistant to easy manipulation by public policies. As politicians in country after country have discovered to their chagrin, immigration is much easier to start than to stop. The most important mechanism sustaining international integration is the expansion of migrant networks, which occur automatically whenever a member of a social structure migrates to a high-wage country. Emigration transforms ordinary ties such as kinship or friendship into potential sources of social capital that aspiring migrants can use to gain access to high-paying foreign jobs. (Massey, Durand, and Malone 2002, 146)

CHAPTER 3

The Components of a Comprehensive Framework for the Reform of Employment-Based Immigration

This framework for comprehensive immigration reform has been developed by the Economic Policy Institute (EPI) as part of its Agenda for Shared Prosperity. The work has been directed by Ray Marshall with the assistance of Ana Avendaño from the AFL-CIO and Ross Eisenbrey from EPI. We have consulted widely with AFL-CIO and Change to Win unions, immigrant and civil rights advocates, and immigration experts from academia, think tanks, and other organizations. This framework is based on two assumptions:

1. Comprehensive immigration reform, including the adjustment of status for millions of undocumented immigrants, will not succeed unless the labor movement is united and allied with progressive, pro-immigrant, and community-based organizations.
2. Successful immigration policy also must contain five comprehensive, closely related components: (1) an independent agency, the Foreign Worker Adjustment Commission (FWAC) to determine the numbers and characteristics of foreign workers to be admitted based on objective analyses of shortages of domestic workers with appropriate skills and training; (2) rational, operational control of our borders and tracking of foreign visitors to the United States; (3) effective work authorization systems and procedures to enforce immigration and labor laws; (4) adjustment of status for the current undocumented population; and (5) reforming, but not increasing indentured foreign worker programs. Experience demonstrates that all of these components reinforce each other and are necessary for successful immigration reform.

Framework components

1. Create an independent agency

The United States should create an independent Foreign Worker Adjustment Commission to assess labor shortages and determine the number and characteristics of foreign workers to be admitted for employment purposes. The commission should be led by members appointed to long, non-renewable terms. They should oversee an expert staff of economists, demographers, statisticians, and immigration experts who would work with other agencies as appropriate to determine the need for foreign labor based on analyses of domestic labor supply and demand of workers with appropriate skills and training. The FWAC would recommend employment-based immigration levels, which would become law if Congress did not reject them.

One of the great failures of our current immigration system is that the level of legal immigration is set arbitrarily by Congress—as a product of political compromise—without regard to real labor market needs. The current number of employment-based permanent visas (“green cards”), for example, was determined more than a decade ago. There is no relationship between that number (140,000 visas per year, divided among various categories) and the economy’s actual needs. Thus, even though a particular sector may be facing a real, market-tested, long-term labor shortage, employers in that sector cannot bring in a “green card” foreign worker without subjecting the applicant to a long wait (sometimes as long as 20 years).

The failure of the “green card” system has encouraged employers to fill permanent jobs with undocumented or indentured temporary workers, who by nature have limited rights (see component 5 below).⁹

Furthermore, in determining what constitutes a true labor shortage (rather than one artificially induced by suppressing wages and other benefits), the agency must ensure the preservation of labor standards. Thus, for example, determinations of need must include the protection of prevailing and/or adverse wage and benefit rates, and preclude the misclassification of workers as independent contractors.¹⁰

Although most attention has focused on the H-2B, H-1B, and L-1 visas, the FWAC should examine the impact of all visa categories on employment in the United States. It also would be useful for the Commission to examine the impact of immigration and other factors on labor market structures and on U.S. student enrollments in graduate and undergraduate programs leading to various occupations.

This agency should be independent, with a high degree of integrity and technical competence. It also should have the flexibility to adjust foreign labor supplies to occupational, industrial, and regional labor shortages.

Independence could be enhanced by appointing commissioners for long, staggered terms; limiting the number of members from any political party; and creating a culture of independence as has been done, for example, with the Bureau of Labor Statistics.

The credibility of FWAC members could, in addition, be strengthened by appointing the secretaries of State, Labor, Health and Human Services, and Homeland Security, as well as the Attorney General and the Commissioner of Social Security, as ex-officio

commissioners; establishing tripartite labor market advisory committees; and hiring highly competent career staffs.

Flexibility could be achieved by authorizing the commission to adjust labor supplies to demand within broad limits set by Congress. Flexibility also could be enhanced by such streamlined administrative procedures as deferring to regional, industry, or occupational mechanisms (like joint labor-management committees) that meet stipulated standards and guidelines.

Assessments of labor shortages are plagued by the paucity of reliable data and realistic definitions of labor shortages. For example, business and media commentators commonly cite the exhaustion of H-1B visas on the first day of bidding as evidence of a skilled worker shortage. However, this mismatch only tells us there is a high demand for indentured labor, not that there is a real shortage of qualified workers. The best evidence of labor shortages would be rising compensation and employment levels. By suppressing salaries and benefits relative to the market for free labor, the use of indentured workers could confirm the presumptive shortages of skilled domestic workers.

Objective analyses are needed because most assessments of domestic worker shortages are influenced by organizations and analysts with biases for or against the admission of foreign workers.

Jacob Kirkegaard (2007) of the Peterson Institute for International Economics illustrates the problem caused by inappropriate measures and analyses of labor shortages. Kirkegaard recommends dropping the Department of Labor's foreign labor certification (FLC) program for legal permanent residents (LPR—"green cards") for professionals (E-2), skilled workers, and some unskilled workers (E-3) because, he contends, the United States will shortly experience stagnant growth in its highly educated workforce. He also recommends dropping the FLC for highly skilled H-1B workers admitted for up to six years, since, he argues, "U.S. software workers in the aggregate have not suffered in the U.S. market...the foreign labor certification is unnecessary" (Kirkegaard 2007, 84). Kirkegaard likewise recommends abolishing the annual cap on H-1B visas since, because of the stable demand for H-1Bs, "it is unlikely that abolishing the congressional cap will lead to a massive instantaneous increase in the demand for visas" (Kirkegaard 2007, 85). This is a curious conclusion since he also argues that "The H-1B program is a clear example of a demand-supply mismatch: in the spring of 2007, the entire quota for FY 2008 was used up in less than a day!"

Kirkegaard's factual support for these recommendations includes:

- The growth of educated workers in the United States workforce has slowed, both because of the poor performance of U.S. students on international math and science assessments and the pending retirement of the well-educated baby-boom cohort.
- U.S. software workers' wages have been above average for the U.S. workforce as a whole and their unemployment rates have been relatively low.

There are several problems with this analysis, especially the comparison of software engineers and computer programmers with the whole workforce. A more appropriate comparison would be with similarly skilled workers. Intra-national comparisons also ignore declining real wages in the United States between 2000 and 2005 for all college-educated workers except those with postgraduate professional degrees (i.e., MBAs, JDs, and MDs) (Marshall 2008, 142). Second, there is little doubt that with rapidly rising demand, computer professionals' salaries would have been higher but for the relatively large percentage of H-1Bs admitted in these occupations. There also is evidence, discussed below, that using foreign workers and outsourcing to suppress the salaries of workers who could be in short supply probably deters U.S. students from entering these occupations.

The admission of large numbers of foreign workers also reduces pressure to upgrade and train domestic workers, a process that could produce skilled science and technology workers much faster than Kierkegaard implies (NCSAW 2007).

Finally, the unemployment rate for highly educated workers is not a very good measure of labor market impacts. Well-educated workers could be underemployed, which would not show up in the unemployment statistics.

Objections to an independent foreign worker adjustment commission include:

1. **Objection:** The FWAC would distort labor markets, which should be allowed to adapt foreign labor supplies to employer demand. Indeed, according to these critics, employers—not government bureaucrats—are better able to determine labor market needs (Hanson 2007).

Response: To a significant degree, legal and unauthorized foreign labor supplies are now employer-driven, resulting in the suppression of wages, the destruction of labor standards, and growing inequality of wages and incomes. As noted earlier, employers often prefer foreign workers whose limited options make them more willing to accept substandard wages and working conditions. Comprehensive immigration reform is required to correct these abuses and protect foreign and domestic workers.

2. **Objection:** The FWAC would create bureaucratic rigidity and inefficiencies.

Response: This is a real challenge—we should therefore do everything possible to ensure administrative flexibility and efficiency. However, as noted, the present politically determined immigration processes are far too rigid and inefficient. The administration of foreign labor programs therefore should be greatly improved, including providing adequate technology and staff to administer innovative and streamlined procedures.

3. **Objection:** Some experts who agree that an independent foreign worker adjustment commission would be a good idea nevertheless believe it would be hard to persuade Congress to relinquish its control of immigration.

Response: Congress would retain oversight and control, but give the FWAC the flexibility to identify shortages and admit foreign workers within broad limits set by Congress. Some advocates believe, in addition, that an independent agency would give members of Congress cover to counteract political pressure for a new or expanded indentured foreign worker program not justified by objective labor market needs, as well as the exclusion of foreign workers even when shortages have been verified.

4. **Objection:** There are no accurate and timely data to enable the FWAC to measure labor shortages and no definitions and measures suitable for this purpose.

Response: This is a valid concern. Even though there are no generally accepted measures, economists have developed concepts that could be refined for this purpose. We therefore could proceed in two stages with the FWAC: (a) an adequate period of time to develop and refine concepts and measures and (b) an implementation stage. Congress could authorize the FWAC, allow it to develop concepts and measures as well as operating procedures, and then authorize it to begin operations.

The development of operational measures of labor shortages could build on existing concepts. Economists commonly stipulate that a shortage exists when “the number of workers available increases less rapidly than the number demanded at salaries paid in the recent past” (Blank and Stigler 1957, 23). Of course, if an employer is trying to recruit more highly qualified workers for the compensation paid to those less qualified, this does not signify a shortage.

Jared Bernstein and James Lin use five measures to indicate a labor shortage in a specific occupation: (1) average unemployment levels over a three-year period; (2) employment growth measured as changes in average occupational shares for different time periods; (3) average hourly wage growth over the same period; (4) 10-year projections in employment growth; and (5) projections of workers needed to replace those who are leaving an occupation for various reasons.¹¹

The need for an independent agency to produce more reliable labor shortage measures and data is illustrated by the confusion over whether the United States faces a shortage of college-educated workers. Numerous predictions of “severe shortages” of these workers have proved wrong, even those made during the 1980s by the highly respected National Science Foundation (Rand Corporation 2003). However, neither earnings nor unemployment patterns indicated a science and engineering shortage. A 2001 National Research Council (NRC) report concluded that “the current size of the H-1B workforce relative to the overall number of [information technology] professionals is large enough to keep wages from rising in a tight labor market” (National Research Council 2001). The NRC also concluded that there was “no analytical basis on which to set the proper level of H-1B visas, and that the decisions to reduce or increase the cap on such visas are fundamentally political.”¹²

The exaggerations about labor shortages are not limited to college-educated workers—though IT industry representatives have done a good job of convincing the

media that a shortage does indeed exist. Philip Martin, for example, presents careful evidence to show that farm worker wage increases do not justify claims of shortages; these wages have increased less in Florida and California, states with large numbers of H-2A (temporary agricultural) workers, than elsewhere in the country. Martin demonstrates, in addition, that arguments that higher farm worker wages increase food costs also are greatly exaggerated: “For a typical household, a 40 percent increase in farm labor costs translates into a four percent increase in retail prices ($0.275 \times 0.33 =$ nine percent, farm labor costs rise 40 percent, and $0.4 \times 9 = 3.6$ percent). If farm wages rose 40 percent and were passed fully to consumers, average spending on fresh fruits and vegetables would rise by \$14 a year (3.6 percent \times \$392)” (*Rural Migration News* 2009).

Business organizations and public officials often justify a larger indentured worker program on demographic trends. For example, projections indicate a significant slowing in U.S. workforce growth between 2000 and 2050 when, because of the retirement of the baby boomers, the workforce is projected to grow by only 36%, compared with 127% between 1950 and 2000 (Aspen Institute 2002). It will be hard to maintain the trend GDP growth of about 3.0% if the workforce grows by only 0.7% annually, implying a productivity increase of 2.3% a year, an unlikely scenario under present conditions. Raising workforce growth to 1.4% would require adding 30 million more workers between 2000 and 2030, or 1 million a year.

The need for immigrants to sustain growth would seem to be justified by U.S. experience since 1990; immigrants accounted for over half of U.S. workforce growth during the 1990s and 86% between 2000 and 2005. There are, however, several problems with basing foreign labor requirements on these long-term projections:

1. Economic growth of 3% a year is not necessarily a desirable objective if the domestic workforce is growing at only 0.7% a year. People would be better off if slower labor force growth caused per capita GDP to rise. In other words, policy makers might choose to focus on per capita GDP and increasing productivity, rather than faster workforce growth.
2. Workforce growth of above the projected rates can be achieved without reducing real wages by:
 - a. making work attractive to nonparticipants who are able to work or who could work with proper supports (e.g., child care, flexible work arrangements and telecommuting, deferred retirements, reestablishing decimated youth labor markets, and providing opportunities for ex-offenders); and
 - b. admitting immigrants on terms that respond to real labor shortages and do not displace or reduce the wages and conditions for domestic workers.

Recommendations

Our specific recommendations for the structure and purpose of the FWAC are as follows:

Purpose

The Foreign Worker Adjustment Commission, named by the president, will be responsible for researching, analyzing, and making recommendations to the President and the Congress for a rational system for future workplace immigration based on the labor market needs of the United States.

The FWAC will act in two phases. In phase one, the Commission will design a new flexible system to address the future flow of workers into the U.S. labor market and determine the methodology to be used for setting the number of employment visas, both permanent and temporary. The Commission will present its recommendations to Congress for approval. In phase two, the Commission will set future flow numbers based on the methodology approved by Congress.

The Commission

In designing the new system, and establishing the methodology to be used for determining labor shortages, the Commission will be required to examine the impact of immigration on the economy, wages, the workforce, and business. For example, the Commission should consider:

- Assessing labor shortages by examining occupational unemployment rates by region, changes in real wages, growth rates in employment, and future employment projections;
- Examining historic migration patterns and U.S. demographic trends, including U.S. birth rate, U.S. education levels, age profiles and trends, and long-term needs of the U.S. population;
- Studying the impact of immigration on enrollment in graduate and undergraduate programs in U.S. colleges and institutions; and
- Considering valuable “lessons learned” from past and present immigration policies that are relevant and applicable to the development, design, and implementation of a new program.

The Commission should ensure that the methodology for establishing future flow numbers is connected to adequate workforce development, including education and training. The Commission should consider the perspectives of all key stakeholders.

When designing the system, the Commission will be governed by the following principles:

- The top priority is the preservation of U.S. labor standards, which includes protecting prevailing and/or adverse wage and benefit rates, minimizing the impact of future flow programs on the domestic market, and precluding the misclassification of workers as independent contractors.

- The new system design should afford new workers the rights and protections necessary to avoid creating separate classes of workers and ensure equality of opportunity of all workers.
- It is in the national interest for workers who are coming to the United States to fill non-seasonal, non-temporary jobs to have the ability to bring their immediate family members.

Structure of commission

There should be an uneven number of members. The chair and four other members would be chosen by the president, and remaining members would be chosen one each by House and Senate Democratic and Republican leaders. Members would serve for nine years.

- Members would be individuals with recognized expertise in immigration, economics, demography, national security, labor, civil rights, business, and other pertinent fields.
- The Secretaries of Labor, Homeland Security, State, Health and Human Services, and the Commissioner of Social Security and Attorney General would be ex-officio members.
- The numbers and characteristics of future flow workers should be determined by neutral experts, in multiple disciplines (economists, demographers, statisticians, sociologists, and immigration experts), acting independently with a high degree of integrity and technical competence.
- The Commission would have professional staff, a budget by appropriated funds, and receive administrative support and other services from the federal agencies named above.

The legislation would require that a report containing the future flows recommendations be submitted to the Congress by a date certain (12 months after enactment) and Congress would be required to act on these recommendations (within one year), otherwise the President would be authorized to implement such recommendations.

2. Rational operational control of the U.S. border

A new immigration system must include rational control of our borders. Border security is clearly very important, but not sufficient, since 40% to 45% (over 5 million) of unauthorized immigrants did not cross the border unlawfully, but overstayed visas. Border controls therefore must be supplemented by effective work authorization and other components of our framework.

So far, border enforcement has not been very effective, and, according to some experts, has even been counterproductive. For example, immigration specialist Douglas

Massey (2005) argues that as Border Patrol budgets went up, apprehension declined. As fences are built in urban areas, people cross at more remote and physically hazardous places. Stronger enforcement causes undocumented immigrants to stay longer. He concludes, “A border policy that relies solely on enforcement is bound to fail.”

There also is little evidence that building actual and virtual fences has been very effective. Smugglers of people, drugs, arms, and other things have effectively used new roads along these barriers and have actually cut fences and put in their own locked gates. The 28-mile pilot project in Arizona to build a “virtual fence” of sensors and cameras has fallen short of expectations for technical as well as administrative reasons. The problem, according to the GAO, was too much haste and not enough consultation with the Border Patrol (*New York Times* 2008). Boeing’s “virtual fence” had the wrong software, cameras that wouldn’t focus, and systems that were stymied by such simple things as rain (Smith and Epstein 2008). According to the *New York Times*, “The Bush administration has confused things further by saying the system is working as planned—but won’t be expanded” (*New York Times* 2008).

Internal tracking: As noted, it will not be adequate just to control the border; we also must do a much better job of tracking the over 30 million people who enter the country legally every year. In the past we have not had, or been willing to use, the technology needed to accomplish this task. But we are beginning to use electronic verification systems for this purpose. With the US-VISIT program, for example, Customs and Border Patrol (CBP) inspectors at most ports of entry are taking digital photographs and scanning two fingerprints to be compared digitally with biometric travel documents and other information in US-VISIT databases.

According to some experts, the Student and Exchange Visitors Information System (SEVIS) does a good job of tracking foreign students and could serve as a model for a more effective national system.¹³

Despite much time and resources, DHS has not developed an effective way to track foreigners leaving the country, but proposes to solve this problem by delegating it to ocean and air carriers at a cost of \$3.5 billion over 10 years. Not surprisingly, the carriers are not too enthusiastic about this proposal.

On the basis of their detailed studies of data from the Mexican Migrant Project, Massey et al. conclude:

...the expensive post-IRCA enforcement regime has had no detectable effect, either in deterring undocumented migrants or in raising the probability of their apprehension. It has been effective, however, in causing at least 160 needless deaths, it has also lowered wages for workers—native and foreign, legal and illegal—and exacerbated income inequality in the United States. Furthermore, it has guaranteed that these negative externalities are widely felt by transforming a seasonal movement of male workers into a national population of settled families dispersed throughout the country. (Massey, Durand, and Malone 2002, 140)

The United States therefore should continue to strengthen border controls, but in a rational way. Building real or virtual fences alone will not significantly reduce the flow of undocumented immigrants. Controls require effective internal tracking, and workplace enforcement systems, especially a secure identifier, are discussed below.

Practical border controls balance border enforcement with the other components of our framework and with the reality that over 30 million valid visitors cross our borders each year. Enforcement therefore should respect the dignity and rights of our visitors, as well as residents in border communities. In addition, enforcement authorities must understand that they need cooperation from communities along the border. Border enforcement is likely to be most effective when it focuses on criminal elements and engages immigrants and border community residents in the enforcement effort. Similarly, border enforcement is most effective when it is left to trained professional border patrol agents and not vigilantes or local law enforcement officials—who require cooperation from immigrants to enforce state and local laws (U.S.-Mexico Border Policy Report 2008).

3. Worker authorization mechanism

There is almost universal agreement that the current system for regulating the employment of unauthorized immigrants is broken. IRCA attempted to regulate the employment of these workers by requiring that *employers* verify that the employees are authorized to work in the United States. That system, based on so-called “employer sanctions,” failed to curtail the employment of unauthorized workers. As noted earlier, the number of unauthorized immigrants in the United States probably has more than doubled since IRCA was passed.

There are three main reasons for the failure of “employer sanctions.” First, the system relies on employers to police themselves. Thus, unscrupulous employers verify work authorization only when it is convenient for them, such as when workers attempt to organize a union, file wage claims, or exercise other workplace rights.

Second, the failure of the United States to have one secure identifier has given employers a broad defense against charges of hiring undocumented workers. Current law forbids the “knowing” employment of undocumented workers. Employers can accept 22 different types of documents as proof of work authorization, and all they have to do to avoid liability and fines is to claim that documents “look genuine,” and therefore that they didn’t “know” that they were hiring undocumented workers.

Third, until after 9/11, federal authorities seemed to have little or no interest in enforcing IRCA’s employment sanctions provisions.

Furthermore, because the current system only requires that *employers* verify work authorization, it encourages the use of contractors and the misclassification of regular workers as independent contractors, thus avoiding the work authorization verification process altogether.

A secure and effective worker authorization mechanism, which will take verification and enforcement out of the hands of employers, must be developed. The

mechanism must rely on one secure identifier, which every employer will be required to rely on.

Immigration reform should, in addition, impose strict liability on employers who fail to comply with the system's requirements (i.e., either employs a worker "off the system" or continues to hire workers without authorization). Thus, our system would do away with the current legal standard that only prohibits the employer from "knowingly" hiring or continuing to employ an unauthorized worker.

The system also must have strong anti-discrimination protections so that employers will not be tempted to refuse to hire workers who appear to be foreign, and must protect basic civil liberties. A system that would apply to all workers would avoid this problem. An effective system also should include strong privacy, due process, and other protections that limit the use of the identifier to verifying work authorization, rather than treating it as a national identity card.

Thus, a secure worker authorization system is absolutely essential to an effective immigration system. There are two parts of such a system: (1) a secure worker identifier and (2) an accurate database to ensure that the person with the ID is actually who he or she claims to be and is authorized to work in the United States.

The ideal system would contain a secure identifier, make it easy for an employer to check the identifier against a secure and error-free database, and remove the employer (who often has neither the will nor the means to prevent fraud) from the enforcement process.

There is general agreement that the technology exists to embed biometric data in an ID card to make it much more secure than the traditional drivers' licenses, green cards, or social security cards, all of which are relatively easy to counterfeit.

The present system used to check immigrants' status has several problems:

1. The E-Verify system's error rate is too high to give it credibility.¹⁴ Some errors are more obvious and easily detected than others. The system primarily prevents a common kind of *document* fraud, that is, where a person produces a document based on false or manufactured information. The hardest to detect is *identity* fraud where the applicant has a valid ID belonging to someone else, the use of an ID that appears to be valid but is not, and employer-initiated fraud that provides valid green cards to unauthorized immigrants. The development of a secure identifier with a photograph or biometric data (e.g., fingerprints) could reduce this fraud, but not eliminate it unless there also was a secure and error-free database, which, despite considerable improvement, does not now exist (Lowell, Martin, and Bump 2007).
2. The program is supposed to provide applicants time to correct these errors, but at least partly because of burdensome rules, about half fail reliably to do so (Lowell, Martin, and Bump 2007).
3. The errors produced by the system disproportionately discriminate against naturalized citizens and legal immigrants: the error rate is only 0.5% for native-born

citizens, but 10.9% for naturalized citizens, and 3.0% for non-citizens (Lowell, Martin, and Bump 2007). This problem is compounded by the fact that the non-native workers are less likely to know their rights and are more vulnerable to unscrupulous employers who take advantage of this reality to exploit these workers.

4. The system raises the risks of identity theft and other privacy issues because of the vastly increased numbers of people with access to it, a number that would greatly expand beyond approximately 1% of employers who now regularly use the system. It should be noted that E-Verify represents a radical expansion of government involvement in U.S. labor markets without adequate privacy protections. Moreover, it apparently is fairly easy for someone posing as an employer to access the database. This problem is compounded by the fact that the system's inability to detect identity theft creates an incentive for unauthorized workers to acquire false identities in order to get jobs.
5. Employers complain that E-Verify is costly and difficult to use. The time delays required to correct erroneous non-confirmations can cause employers to retain and train workers for as long as 90 days before learning whether or not they are authorized to work.
6. Some courts have questioned the validity of using the social security database to check work authorization for immigration purposes. This was an issue, for example, in the 2007 *Aramark* case. This company fired workers whose legal status was not verified by "no match" letters. The Service Employees International Union (SEIU) argued that these discharges violated the SEIU-Aramark collective bargaining agreement. An arbitrator agreed with the union and ordered the workers' reinstatement. A federal district court reversed the arbitrator and the union appealed to the U.S. Court of Appeals for the 9th Circuit, arguing that IRCA did not trump collective bargaining agreements. In a June 16, 2008 ruling, the 9th Circuit upheld the arbitrator, reversing the lower court, arguing that the "no match" process could not provide convincing evidence of an immigration violation, even when the fired workers did not meet the short deadlines required to correct the "no match" finding. The court held that the main purpose of the "no match" letter is not immigration related, but rather to notify workers that their earnings are not being properly "credited" for social security purposes. The court also noted that there were many reasons for errors in the social security database and that a "no match" finding "does not make any statement...about immigration status."¹⁵
7. The most egregious use of the work authorization process is where employers use that system to discriminate against immigrant workers and deny them legal protections that should apply to all workers regardless of their immigration status. As Human Rights Watch has documented, many employers take advantage of employees' fear of drawing attention to their undocumented status "to keep workers in abusive conditions that violate basic human rights and labor rights" (Compa 2005).

The Supreme Court exacerbated this problem with the 2002 *Hoffman Plastic* case when it ruled that undocumented workers were not entitled to back pay for illegal discharges for union activity, thus greatly weakening their ability to organize and bargain collectively. When workers begin to organize, employers who know or have reason to believe their employees are undocumented (and in some cases supplied them with false documents) threaten to expose them to immigration authorities.¹⁶ But the most detrimental aspect of the Hoffman decision is that it provides a perverse incentive for employers to hire undocumented workers because it allows employers to fire these workers for union activity with impunity.

Some states have followed the federal government's lead by limiting or eliminating such basic workplace protections for immigrants as compensation for workplace injuries and freedom from discrimination.¹⁷ Indeed, an assistant U.S. attorney in Kansas encouraged employers, insurance companies, and others to verify workers' immigration status after they file for workers' compensation and to refer "no matches" to his office for prosecution for document fraud (Anderson 2006). These practices are detrimental to labor law enforcement because they cause workers to be very reluctant to report violations. Regularizing the status of these workers would take away this abusive tool from employers, as would a requirement that immigration authorities avoid entering workplaces during labor disputes.

Our recommendations would, in addition, eliminate the Hoffman Plastic problem by not allowing an employer to raise workers' status as a defense against labor law violations. Under current law, for example, when a worker files any employment-related suit, the employer always inquires about the plaintiff's status in discovery, often successfully, because status is arguably relevant to damages. With our recommendations, immigration status would have no connection to damages, thus not be relevant and not discoverable. In the NLRB context, employers would not be able to raise the workers' status as a defense to back pay as they are now allowed to do.

We should likewise strengthen labor law enforcement with whistleblower protection for unauthorized workers who expose violations. This can be done by giving these unauthorized workers U visas, which currently only protect victims of serious crimes, or by creating a new visa category.

Abuse of the enforcement system is not limited to employers. Immigration and Customs Enforcement (ICE) itself has focused on workforce enforcement without adequate respect for workers' constitutional rights. In December 2006, for example, ICE agents raided six meatpacking plants. According to United Food and Commercial Workers' (UFCW) president, Joe Hansen, who has filed a class action lawsuit against DHS on behalf of citizens and legal residents caught up in these raids:

...at gunpoint, more than 12,000 workers were herded together and systematically stripped of their rights....Workers were denied access to telephones, bathrooms, and legal counsel. Citizens and legal residents were denied the opportunity to retrieve documents to establish their legal status. Some were handcuffed and held for hours. Others were shipped out on buses....Families,

schools, and day care centers could not be contacted to make arrangements for the children of detained workers—not knowing where or when they might see a missing family member again. (UFCW 2007)

Because of inadequate information and identification processes, ICE had warrants for less than 1% of the workers arrested in these raids.

Because of these problems, several policy issues are raised in developing a new work authorization system. Do we try to fix the defects in the present system or develop a new one? The main advantage of the current system is its size and momentum with the Congress and the states.

Its disadvantages include the fact that, despite improvements, experts predict it will take at least 10 years to make it sufficiently secure through biometrics and enabling cross references between databases (i.e., passports, drivers' licenses, and social security numbers) to be operational. Employers currently respond to “no matches” by discharging workers even though “no matches” are not proof of IRCA violations.

The PIN system: An alternative to E-Verify

Marc Rosenblum of the Migration Policy Institute proposes a PIN-based system designed to overcome most of the E-Verify system's problems, as well as to enable workers to manage their own verification process.¹⁸

The PIN system Rosenblum proposes would have three stages:

1. All newly authorized immigrants, new workers, and job changers enroll in a new database and are awarded PIN numbers and secure personal identifiers.
2. Before accepting a new or first-time job, enrolled workers would use their PIN numbers to receive a *verification code* from the local DHS or other appropriate authority to be used only for this purpose.
3. Employees present this verification code and personal identifiers to the employer, who verifies the information by telephone or other electronic means and receives a confirmation number to place in the employees' records.

This system's advantages include:

1. Greater worker protection and control. The worker would resolve all problems with the database before applying for work, thus giving unscrupulous employers no chance to exploit vulnerabilities associated with the present system. Workers, not employers, would control their verification data.
2. The system would provide much better identity security. Trained professionals, not employers, would authenticate workers' identities when they enroll in the system. Thereafter, security would be controlled through the PIN numbers and biometric

data embedded in the workers' personal identifiers. This system would eliminate the most common form of identity theft—where a job applicant appropriates someone else's identity, which is easily done by anyone with Internet access.

3. By removing the use of the Social Security number from the process, the PIN system would offer much greater privacy and identity theft protection. A separate, dedicated work authorization system would reduce the concerns from those who now object—on privacy grounds—to the use of the E-Verify database for migration control and national security purposes. The system could be constructed so that the only information provided to employers at the point of hire by a job changer or new employee would be the single-job verification code provided by the authorizing agency.

This system also would have the advantage of being phased in, thus avoiding the daunting challenges of enrolling the whole workforce immediately.

Of course, this system would require some upfront investments in infrastructure by DHS or another authorizing agency and by employees, who, Rosenblum estimates, would have to spend two to four hours to enroll in the system, “about the same time and trouble as obtaining a driver’s license or passport.”¹⁹ The system would add the check-in and self-verification stage to the E-Verify program. However, relative to E-Verify, the system would eliminate erroneous non-confirmation, discriminatory outcomes, a burdensome hiring process, and identity theft. However, unless biometric data were included in the identifier, the PIN system would be vulnerable to collaborative identity fraud, where groups of authorized workers sell their PIN number; fingerprints or photographs in the identifier would make this difficult to do. Even without the biometrics, identity fraud might be mitigated by stiff penalties for violations.

Conclusions

An alternative to modifying the present seriously flawed system would be to phase in a new secure system, like Rosenblum’s PIN proposal, applying it first to unauthorized immigrants whose status is adjusted, new hires and job changers and ultimately to the whole workforce.

Verification could be done by the DHS or federal-state workforce agencies, which could issue biometric identifiers to all who qualified, modeled after US-VISIT, and PIN numbers to all workers, not just immigrants. Over time, the federal agency could build a secure database that ultimately would cover all workers. This system would not be foolproof—people could conceivably supply forged documents to get into the database (the so-called breeder document problem) and then secure biometric IDs on the basis of this false information. But this would be a much smaller problem than we now have.

A second-best alternative would be to improve E-Verify with strong privacy and due process protections. This has the advantage of leveraging an existing large system, but with numerous known and unknown errors and no single secure identifier. Despite its flaws, this system has considerable political support.

4. Adjustment of status for the current undocumented population

Immigration reform must include adjustment of status for our current undocumented population, but this time it must be done right. Otherwise, we will again see an accelerated future flow of unauthorized workers just as we did after IRCA was supposed to have fixed this problem.

Rounding up and deporting the millions of immigrants who are presently in the United States without legal authorization may make for a good sound bite, but it is not a viable solution. And if these immigrants are not given adequate incentive to “come out of the shadows” to regularize their status, we will continue to have a large pool of unauthorized workers whom employers can exploit in order to drive down wages and other standards to the detriment of *all* workers.

The large unauthorized workforce likewise has produced an underground economy, without basic protections afforded to U.S. workers, where employers often misclassify workers as independent contractors, thus avoiding payroll taxes and depriving federal, state, and local governments of additional revenue. An inclusive, practical, and swift adjustment-of-status program will raise labor standards for all workers. However, it must be designed to ensure that the adjustment of status mechanism will not encourage future illegal immigration.

Adjusting the status of undocumented residents is the trickiest part of comprehensive immigration reform. In order to draw people out of the shadows, a legalization program needs a carefully orchestrated combination of carrots and sticks. The carrot for most law-abiding unauthorized immigrants who have been in the country for some time would be a clear path to permanent lawful status and citizenship. The stick would be a high probability that those who failed to come forth would not have access to suitable employment and would likely be deported. For this to succeed, most of the other components of comprehensive immigration reform must be working—especially secure identifiers, border and internal enforcement, and an effective work authorization system. By the same token, an effective status adjustment program would reduce the number of unauthorized residents and therefore make these other components more effective. The danger, of course, is that a botched adjustment program will either accelerate illegal immigration or drive people into the underground economy, making both labor and immigration laws harder to enforce.

Opponents argue that adjustment would reward illegal behavior. There is, of course, a modicum of truth to this argument. These critics would, however, be on firmer ground with this charge if we had a good immigration law—that is, one that was transparent, fair, and enforceable. IRCA’s backers knew that the law would be hard to enforce without secure identifiers and work authorization systems or adequate border and internal enforcement strategies and resources. Undocumented residents therefore were justified in believing that if they got over the border or through ports of entry, they could work, bring in families, and seek the American dream. Unauthorized migrants have had many people willing to help them adjust to life in the United States, especially before 9/11.

Effective immigration reform requires that we clean up the damage done by IRCA's mistakes. This time, in order to deter future undocumented flows of immigrants expecting to have their status adjusted, immigration reform should communicate clearly that this will be the last massive adjustment of status. In recognition that unauthorized immigrants have violated IRCA, however defective that law is, adjustees should pay a reasonable fine sufficient to penalize their transgressions but not so onerous as to deter them from registering for adjustment of status. These immigrants also should provide proof that all appropriate taxes have been paid and be put at the end of the line for green cards while earning lawful, permanent residence status.

There are thus four major reasons to adjust status: (1) we do not have a good law; (2) it will raise labor standards to give adjustees full rights in the workplace and allow them to organize and bargain collectively without fear of deportation; (3) a roundup—like the one in the 1950s—not only violates American values and the Constitution, but also is impractical; and (4) it would be hard to have effective immigration reforms without it.

We can learn much about how to implement a status adjustment process from previous experiences. Indeed, from an administrative perspective, adjustment of status was one of the things done right in 1986: a separate agency created to accomplish this task adjusted the status of about 2.7 million people in 18 months. Without proper identifiers and information systems, however, it was almost impossible to prevent fraud. The 1986 Act also invited fraud by not allowing immigrants to unite families.

5. Improvement, not expansion, of Temporary Indentured Worker Programs

The United States must improve the administration of existing temporary worker programs,²⁰ but should not adopt a new indentured or “guest worker” initiative. Our country has long recognized that it is not good policy for a democracy to admit large numbers of workers with limited civil and employment rights, and thus Congress has limited the size and scope of these programs. The H-2B program, for example, was meant to address only seasonal, short-term labor shortages for unskilled nonagricultural jobs. And the H-2A visa program is restricted to temporary agricultural workers; the H-1B visas are for high-skilled workers and fashion models, and L-1 is for executives and specialized knowledge staff of foreign companies with U.S. facilities.

Current programs provide very little, if any, protections for the indentured foreign workers, and are detrimental to U.S. workers. The Department of Labor (DOL) has taken the position that it has no authority to enforce the prevailing wage or other requirements in the H-2B program. Thus, H-2B employers regularly violate prevailing wage and other laws with impunity. In addition, unions or other interested parties do not have standing to challenge the DOL's approval of an indentured foreign worker petition. In some cases, employers have been able to import workers into jobs that are not covered under the H-2B program. Employers who use the H-1B and L-1 systems for more highly skilled workers do not have to test the U.S. labor market at all, and

clearly use that program to displace American workers and suppress their wages. Both the H-1B and H-2B programs degrade American labor market institutions.

Experience in the United States and Europe shows that the short-run economic benefits of indentured worker programs are likely to be more than offset by long-run social, political, and economic problems. For these reasons, while every major U.S. immigration study commission, including the Carter administration's Select Commission on Immigration and Refugee Policy and the 1995 U.S. Commission on Immigration Reform, started with the idea that a large new indentured worker initiative might be desirable, but after careful examination, each rejected such a program as bad policy.

Indentured worker advocates usually contend that these programs will stem the flow of illegal immigration, citing the 1942-64 U.S.-Mexico bracero experience as justification. But there is no credible evidence for this conclusion. A stronger case can be made that the very large bracero program, which imported 450,000 indentured workers at its peak, temporarily reduced illegal immigration but in the long run initiated migrant employment networks that ultimately accelerated unauthorized immigration. Between 1942 and 1946 about 4.6 million braceros were admitted and 5.2 million unauthorized immigrants were apprehended.

New indentured worker programs not only are unwise, but probably unnecessary as well. Improved temporary worker programs should be used for short-run temporary jobs, not to fill regular longer-term positions. If an independent entity concludes that more foreign workers are needed for permanent jobs, they should be admitted as immigrants with full legal rights, including the right to earn citizenship. And, if qualified unauthorized migrants' status is adjusted and they are allowed to unite their immediate families as we propose, there will be a continuing flow of workers from Mexico and other source countries.

As noted earlier, there is reason to be skeptical of media and business reports of either college-educated or unskilled labor shortages. Indeed, we do not have very reliable data on the number and impact of existing temporary worker programs; there are, for example, no statistics on the total number of L-1 or H-1B visa holders in the country, but informal estimates put H-1Bs as high as 600,000 to 800,000 (Kirkegaard 2007, 47; IFPTE 2008). The 65,000 cap usually cited by industry representatives ignores exceptions to this cap, including 20,000 for students with advanced degrees and unlimited numbers for nonprofits, research institutions, and universities. Moreover, these visas cumulatively can be renewed for up to six years and then turned into green cards. As a result, an average of over 230,000 foreign professionals gets new or renewed H-1B visas each year (U.S. General Accounting Office 2006).

We also are told that these visas are needed to provide employers the "best and brightest" from other countries, but the data show that most H-1Bs are for ordinary workers.

Microsoft founder Bill Gates has become an outspoken champion of larger H-1B quotas, usually using the "best and brightest are needed to make us more competitive" argument, but the wages paid to H-1B workers, on average, do not reflect such skills. "According to the U.S. Citizenship & Immigration Service's (USCIS) most recent annual

report to Congress, the median wage in FY2005 for new H-1B computing professionals was \$50,000, far below the median for U.S. computing professionals. The median wage for new H-1Bs is even lower than the salary an *entry-level* bachelor's degree graduate would command. So, half of the 52,352 H-1B computing professionals admitted in FY2005 earned less than entry-level wages. And even at the 75th percentile, new H-1B computing professionals earned just \$60,000, a far cry from the impression left by Microsoft's Bill Gates that most H-1B workers are paid \$100,000 or more. (Hira 2007). It is worth noting that in January 2009 Microsoft was continuing to call for removing the caps on highly skilled immigrants as it announced plans to eliminate 5,000 jobs in a number of technical areas, including research and development and information technology (Herbst 2009).

If an independent assessment concludes that more temporary foreign workers are needed, this should be achieved by improving the administration and strengthening the foreign and domestic worker protections of current programs. The FWAC's determination of the need for short-term foreign workers will set the conditions and numbers for the various visa categories, but the Commission could decide to eliminate these categories altogether. Employers and their supporters complain that these programs are too cumbersome and litigious, at least partly because they do not like the foreign and domestic worker protections. Employers have been able to "game" the system to get the foreign workers they prefer and want the market test to be predicated on finding U.S. workers who are *as good as* the highly screened foreign workers, not the proper legal requirement that they meet *reasonable minimum standards*.

It is particularly important to strengthen the worker protections in present indentured worker programs. There is abundant evidence that vulnerable foreign workers admitted with H-2B visas are subjected to appalling abuses in the United States and their home countries; these include fraudulent claims by recruiters and contractors about the quality and amount of work in the United States, the contraction of burdensome debts to pay for transportation to the United States based on these claims, deplorable living and working conditions, and not being paid for work done. The practice of seizing foreign workers' passports and other documents and their heavy dependence on particular employers who deduct a large part of the indentured workers' pay for (often substandard) housing, transportation, and meals, frequently subject these workers to near-peonage conditions (Greenhouse 2007, 2008, ch. 12; Bauer 2007).

As noted, however, the adverse effects on American workers of current indentured worker programs are not restricted to low-wage workers. Ron Hira (2007) and others have documented the failure of the H-1B and L-1 programs to protect American workers' jobs and wages. Hira attributes these shortcomings to the absence of labor market tests to prevent adverse effects on American workers, allowing employers to pay wages far below prevailing rates, and deficient government oversight of these programs. According to Hira, "The poor design of the H-1B and L-1 programs has led to outcomes directly contradicting the intent of the programs. H-1B and L-1 visas facilitate the outsourcing of U.S. jobs, rather than keeping them here" (Hira 2007, 5). Moreover, "While the regulations governing the prevailing wage appear to be reasonable on paper...[t]he

implementation of the prevailing wage regulations is riddled with loopholes, enabling firms to pay below-market wages” (Hira 2007, 3). This conclusion is admitted by employers and documented by the Government Accountability Office. For example, Roger Cooker, director of staffing for Texas Instruments, admitted that H-1B workers are part of their strategy to keep wages down” (Department of Professional Employees 2008). Because Congress has granted the DOL limited oversight authority, the department’s Office of Inspector General has described the labor certification process as “simply a ‘rubber stamp’ of the employer’s application” (Hira 2007, 4).

There is abundant evidence that high-tech companies, particularly those from India, have used the L-1 and H-1B programs to depress American wages, displace American workers (who often are required to train their foreign replacements as a condition for severance pay), and facilitate the outsourcing of jobs to other countries, particularly India (Kruse and Blackwell 2008). H-1B workers may be hired even if their employment displaces U.S. workers or qualified U.S. workers are available. Kirkegaard elaborates, “it is indeed possible to start a business in the United States and staff it entirely with H-1B visa recipients or replace entirely an existing company’s U.S. workforce with H-1B visa recipients, provided that these workers are paid more than \$60,000 per annum or all have relevant master’s or higher degrees” (Kirkegaard 2005). According to BLS (2005), the national median salary for 15-0000 Computer and Mathematical Occupations (Major Group) in FY2005 was \$63,940; this would prove to be approximately \$14,000 more than the H-1B \$50,000 median salary cited by Hira (2007).

There is evidence that immigrants have altered labor market structures at both ends of the occupational spectrum. In science and engineering occupations, the importation of foreign workers depresses wages and therefore fewer American students enter fields with large numbers of H-1B workers relative to occupations like business, law, and medicine with fewer foreign students and workers (Hira 2007; Freeman 2006). At the other end of the spectrum, youth labor market structures and employment opportunities have been decimated by the employment of older adults and younger immigrants (Sum, McLaughlin, and Khatwala 2008). The L-1 program does not require prevailing wages. Steven Greenhouse reports that WatchMark, a company near Seattle, forced American engineers to train their Indian replacements as a condition for receiving severance pay. The Americans earned \$80,000 a year; the Indians, \$5,000 (Greenhouse 2008, p. 208). Lax oversight and enforcement have led to considerable fraud and abuse in temporary worker programs. An audit requested by Senator Charles Grassley found that a staggering 21% of H-1B applications contained fraud and/or serious violations. A U.S. Citizenship and Immigration Services (USCIS) report revealed that 13% of petitions for H-1B visas on behalf of employers were fraudulent and 8% contained technical violations. Fraudulent actions included cases where H-1B workers never worked at the specific locations listed in the applications and where job duties were significantly different from those listed on the visa petitions. In one case, where a company requested a visa for a “business development analyst,” USCIS found the H-1B recipient working in a laundromat, doing laundry and maintaining washing machines (USCIS 2008). The

study also found examples of forged documents, fake degrees, and even “shell” companies giving addresses at fake locations.

It was reported in 2008 that Pfizer, the world’s largest pharmaceutical company, was training foreign workers in Groton and New London, Connecticut to replace U.S. workers, who appear to have been misclassified as contingent workers. The H-1B workers were being paid \$35 an hour while the U.S. workers they replaced were paid \$65 an hour. Since Pfizer would have been required to notify the government when they let go large numbers of workers, “these layoffs are being done a few at a time” (Howard 2008).

Recommendations to reform Temporary Indentured Worker Programs

Reform of the existing indentured worker programs must include a ban on foreign labor recruiters; stronger prevailing wage requirements and enforcement mechanisms with a private right of action; and much more rigorous tests of the U.S. labor market.

The administration of revised indentured worker programs must also both eliminate widespread fraud and abuse and cause these measures to achieve their legitimate objectives of protecting foreign and domestic workers as efficiently as possible. Our specific recommendations are:

H-2B reform

1. *Domestic recruitment.* The right of U.S. workers to learn about and apply for jobs offered to H-2B workers must be strengthened and enforced. Before an H-2B visa may be approved, an employer must prove that it has notified its State Workforce Agency (SWA) of the job vacancy at least 30 days in advance of the visa application (but not more than 90 days before the job begins), offering terms and conditions of employment, transportation, and housing to U.S. workers that are at least as favorable as those offered to foreign workers. The SWA must notify every other SWA of the vacancy. The employer must also contact the closest Workforce Investment Act (WIA)-funded one-stop center 30 days in advance of its visa application and offer the job to any qualified U.S. worker. The employer must advertise the job on local on-line classifieds such as Craigslist and in local newspapers for at least 30 days.
2. *Overseas recruitment.* No employer shall use the services of a recruiter that charges H-2Bs more than 15% of their earnings in the United States and employers must have ultimate responsibility for honoring the workers’ contractual guarantees. The U.S. employer must pay the H-2B worker’s cost of transportation to the employer’s place of business in the United States.
3. *Labor market.* If unemployment in the occupation is higher than 7.0% nationwide, no foreign worker may be recruited.
4. *Offer jobs to U.S. workers first.* The right of U.S. workers to take jobs offered to H-2B workers must be strengthened and enforced. Qualified U.S. workers should

have a right to take any job offered to H-2B workers until such time as the H-2Bs have enforceable, written contracts with their employers and have left their country of origin for the United States.

5. *Wages and benefits must not depress U.S. wages and benefits.* The wages and benefits offered or paid to U.S. workers by employers petitioning for H-2B workers, and the wages and benefits actually paid to each H-2B, must never be less than what is required by any applicable collective bargaining agreement or the prevailing wages and benefits for that occupation and local area, and never less than 150% of the federal minimum wage, even if it would not apply to U.S. workers in that occupation. The prevailing wage should be the wage rate and benefit amount as determined by the Davis-Bacon Act or the Service Contract Act, if applicable, or the 75th percentile wage for the occupation as reported by the most recent BLS Occupational Employment Statistics Survey for that local area, whichever is highest.
6. *Non-displacement.* No visa may be issued to an employer who has laid off and not recalled a worker within 180 days of the expected date of hire.
7. *Unions.* H-2B workers must be allowed to organize unions and bargain collectively. They must be protected against employer retaliation and given the same rights to reinstatement and back pay as U.S. workers.
8. *Legal rights and representation.* H-2B workers must have an enforceable contract with their employer, access to legal representation (including by lawyers funded by the Legal Services Corporation), access to an effective administrative complaint process or to the state or federal courts, and protection against retaliation for asserting their rights.
9. *Payroll taxes.* To remove one incentive for employers to prefer foreign workers, H-2B visa employers must be required to pay the same payroll taxes for foreign workers as for U.S. workers, including Social Security and Medicare taxes, and state and federal unemployment insurance taxes, as well as state worker's compensation premiums.
10. *Insurance.* If H-2B workers are not covered by a state's worker's compensation law, the employer must purchase health insurance for them with equivalent benefits as are available to non-indentured employees, at no cost to the worker.
11. *Enforcement.* The Department of Labor must review and approve each visa application and must have the power and resources to audit and investigate employers that use the program.
12. *Joint labor-management and union sponsors.* The H-2B program should also authorize joint labor-management organizations and unions to sponsor trained, skilled foreign workers. Joint or union sponsors could facilitate the administration of these programs by giving assurances that the temporary foreign workers were not displacing domestic workers or undermining their working conditions.

H-1B reform

1. *Institute a labor market test* to establish a shortage of qualified U.S. workers, require proof of genuine recruitment of U.S. workers through state workforce agencies and media advertising, give qualified U.S. workers a legal right to a job in priority over an H-1B, and prohibit displacement of U.S. workers. The same provisions that apply to H-2B recruitment should apply to H-1B visas.
2. *Raise the “anti-fraud” fee to \$5,000 for each visa.*
3. *Ensure a market wage.* Not just the prevailing wage, but a wage rate pegged to the 75th percentile for the occupation and area should be chosen to ensure that recruited workers are the best and the brightest, and that their compensation does not undermine existing local standards. No offer may be made that pays less than the average wage nationwide for all occupations that require a bachelor’s degree.
4. *Shorten the period of indenture.* H-1B workers are admitted to work for the single employer that petitions for their entry. Because the three-year visa is renewable, workers can be compelled to choose between leaving the country and staying with the same employer for as long as six years, *even if the employer underpays them year after year.* H-1B visa holders should be allowed to change employers after 18 months, engage in union activities without fear of retaliation or deportation, and apply for a green card without employer sponsorship.
5. *Close tax loopholes.* Employers and H-1B employees must pay all Social Security and Medicare taxes, as well as state and federal unemployment insurance taxes.
6. *Enforcement.* The Department of Labor must review and approve each visa application and must have the power and resources to audit and investigate employers that use the program. U.S. workers should have the right to sue in an administrative proceeding or federal court if they are displaced, refused a job for which they are qualified and for which an employer is seeking an H-1B, or if an H-1B worker is not paid the required wage and benefits.
7. *Limit individual firms’ H-1B visas.* To avoid gaming of the system by particular companies, limit the number of H-1B visas an employer can obtain based on the size of its workforce.
8. *Employers must list office address, not residence or drop box.*
9. *Standardize market wage claims.* To provide greater transparency and accountability, require employers to use a standard federal wage source when making market wage claims for labor conditions applications (LCAs) with the Department of Labor, as well as to enter a standard occupation code (OC) for each employee. According to BLS (2005), the national median salary for 15-0000 Computer and Mathematical Occupations (Major Group) in FY2005 was \$63,940, or \$14,000 more than the H-1B \$50,000 median salary reported by Hira (2007).

10. *Release H-1B data and conduct random audits.* In order to better monitor the H-1B program and to prevent widespread noncompliance with the legal requirements, the U.S. Customs and Immigration Service (USCIS) should make wage and employer data available for H-1B visas actually used, remove the restrictions on the LCA approval process imposed on the DOL, and require random audits of all aspects of the H-1B program

L-1 visa reform

1. *Prohibit displacement of U.S. workers.*
2. *Require L-1 workers to work on their employer's site to minimize their use to out-source work by U.S. employers.*
3. *Require that L-1 workers have a minimum of 3 years of continuous tenure with the employer that applies for the visa.*
4. *Require that L-1 workers be paid at least as much as their employer's similarly situated U.S. workers and no less than the prevailing wage.*
5. *Require auditing and enforcement by the U.S. Department of Labor and give U.S. workers a right to sue in an administrative proceeding or in federal court if they are displaced or if prevailing wages are not paid to an L-1 worker.*
6. *Impose a \$5,000 "anti-fraud" fee for each visa granted.*

Labor disputes

In addition to these specific recommendations, we believe no indentured visa holder should be employed where there is a labor dispute, defined as where employees are exercising their rights under federal or state labor and employment laws, including their right to form, join, or assist a labor organization or to exercise their rights not to do so; to be paid minimum wages and overtime; to have safe workplaces; to receive compensation for work-related injuries, and to be free from discrimination based on race, gender, age, national origin, religion, handicap; or retaliation for seeking to exercise these rights.

Effectively enforce U.S. labor laws

The protection of foreign and domestic workers requires much more effective enforcement of all U.S. labor laws. The current massive noncompliance apparently is based on the false assumption, universally rejected by democratic governments, that competitive processes should regulate labor markets. Although labor law enforcement should be improved, it should be separated from immigration law enforcement, as it was during the Carter administration's "Employers of Undocumented Workers" initiative, which focused labor law enforcement resources in places known to hire large numbers of undocumented workers. The separation of immigration enforcement was required to gain workers' cooperation, without which labor law enforcement is very difficult.

Effective labor law and immigration enforcement must be based on strategies to induce as much compliance and self-regulation as possible. Experience shows that voluntary compliance works best where there is vigorous enforcement against the worst offenders and is unlikely to work very well at all if there is lax enforcement.

An example of self-regulation would be to require labor-management safety and health committees to complement inspections and regulations, as well as to allow regulations to be adapted to the realities of particular industries or industry segments. It would make sense to encourage the establishment of such procedures for construction, food service, hotels, and other industries where unions and joint labor-management committees could sponsor foreign workers for temporary visas and green cards.

The collection of federal taxes from employers of temporary workers, plus fees charged these employers, would provide funds to improve the operation of a reformed foreign worker program, as well as to help equalize the costs of using foreign and domestic workers. According to Massey et al., for example, “If we assume that 600,000 temporary migrants earned annual incomes of only \$15,000 and had taxes withheld at a rate of 15% (very conservative assumptions), the resulting revenue stream would be \$1.35 billion per year” (Massey, Durand, and Malone 2002, 160). These funds also could be used to provide incentives for the temporary workers, especially H-2B and H-2A workers, to return home instead of remaining in the United States illegally when their visa terms expire; to compensate employers for restructuring jobs to make them more attractive to domestic workers; and supporting the activities of the Foreign Worker Adjustment Commission.

It is, however, a mistake to make any immigration administrative agency totally dependent on fees, providing incentives for the agency to be unduly responsive to immigration lawyers and their clients who are gaming the system. Currently, for example, Citizenship and Immigration Services (CIS) is funded entirely through the collection of fees paid by applicants for visas and citizenship. According to the CIS ombudsman, this financing structure limits the agency’s ability to invest in efficiency-enhancing technology. Indeed, this financing policy creates a perverse incentive for the agency *not* to improve its speed and efficiency because it charges extra fees to expedite applications, enabling outsourcing and other companies willing to pay extra fees to gain special treatment (USCIS Ombudsman 2006, 44-5).

More green cards, fewer indentured workers

There is a strong case for strict limits on the number of temporary workers but for an expanded number of legal permanent residents or “green card” visas for occupations that the FWAC determines to be in short supply. A case also can be made for giving preference for green cards to workers who have been employed for some years in H-2 status, as is now done with H-1Bs. Workers in all temporary categories should have limited periods of indenture to particular employers and should be able to travel freely between the United States and their home countries during their period of indenture. Of course, green card holders should have the same travel rights as U.S. citizens.

CHAPTER 4

Where Do We Go From Here?

We plan to continue to develop this framework for comprehensive immigration in the coming months though our next step will be to develop a legislative outline based on the principles developed in this report. There has been strong support for our framework among AFL-CIO and Change to Win unions, as well as immigrant and civil rights leaders, community-based organizations, and immigration experts, who have made valuable suggestions for improving the factual and analytical framework for successive drafts of this paper. We will, in addition, continue to exchange ideas with members of Congress and the administration to generate their support for our framework. We also plan to reach out to business groups who have a huge stake in an effective foreign worker adjustment process that can meet their legitimate workforce needs.

In addition, we plan to continue to strengthen the factual and analytical base for our framework by conducting a series of symposia on conceptual and measurement problems related to occupational shortages; gaining greater understanding for the operational aspects of our proposal for a Foreign Worker Adjustment Commission by examining the experiences in other countries, especially Ireland, Canada, and Australia; and deepening our understanding of the feasibility of an international development fund, modeled after the European Union's experience, for accelerating value-added economic development in Mexico.

APPENDIX A

Data Tables

TABLE A1 Census data for 2006 show the following changes in mean real incomes between 2000 and 2006

	Percent change	Share of jobs in 2006
<i>less than high school</i>	-3.10%	9.94%
<i>high school grads*</i>	2.00	29.50
<i>some college</i>	-2.00	27.20
<i>BA/S</i>	-2.60	21.70
<i>MA/S</i>	-1.30	8.20
<i>professional degree</i>	7.70	3.30

* Median wage of high school grads declined 2000-06. It is not clear why these workers' incomes rose between 2005 and 2006.

Source: Income data found at <http://www.census.gov/hhes/www/income/histinc/h13.html>; accessed 2/26/08.

TABLE A2 Families left behind by immigrant workers

County	Spouses left behind, 1995-99	Number of children (mean)
<i>Costa Rica</i>	68.7%	2.1
<i>Dominican Republic</i>	55.6	2.8
<i>Guatemala</i>	87.5	2.7
<i>Nicaragua</i>	80.0	1.9
<i>Mexico</i>	89.5	2.4

TABLE A3 Undocumented immigrants from Mexico leave slightly more children behind than documented workers

Mexico	Post-1990	1990-94	1995-99	2000-05
Documented & undocumented				
<i>Spouses left behind</i>	85.4%	78.7%	89.5%	95.8%
<i>Mean number of children left behind</i>	2.4	2.3	2.4	2.5
Undocumented migrants				
<i>Spouses left behind</i>	88.3%	82.4%	92.1%	96.4%
<i>Mean number of children left behind</i>	2.5	2.4	2.5	2.6
Documented migrants				
<i>Spouses left behind</i>	65.2%	54.3%	70.2%	90.5%
<i>Mean number of children left behind</i>	1.8	1.6	1.4	2.0

Source: Calculated by Douglas Massey from a special tabulation of data from the Mexican Migration Project and the Latin American Migration Project, November 2008.

TABLE A4 Type and number of non-immigration admission (2005)

Type of visa	Quantity
<i>F-1 (student)</i>	621,178
<i>H-1B (high-skilled workers and fashion models sponsored by employers)</i>	407,418
<i>H-2B (seasonal nonagricultural workers)</i>	122,316
<i>L-1 (executives and specialized knowledge staff of foreign companies with U.S. offices)</i>	312,144
<i>B-1 (temporary visitors for business)</i>	2,432,587
<i>H-2A (temporary agricultural workers)</i>	7,011*
<i>P-1 (internationally recognized athletes or entertainers)</i>	43,766

* The 7,011 statistic for 2005 evidently is incorrect. There are three separate guest worker concepts: certifications, visas issued, and admissions. In FY05, 6,602 employers were certified by DOL to hire H-2A workers to fill 48,366 farm jobs. The DHS initially reported 7,011 H-2A workers because some of these workers were classified as H-2Bs. H-2A admissions for FY05 are likely to be closer to the 22,141 for FY04 than the 7,011 number reported for FY05 (See "H-2A, H-2B Programs," Rural Migration News, vol. 14, no. 1, January 2007).

Source: Elizabeth M. Grieco, "Temporary admissions of nonimmigrants to the United States," *Annual Flow Report*, July 2006, p. 3.

APPENDIX B

The Labor Movement's Principles for Immigration Reform

Below is a set of principles adopted by a united U.S. labor union movement that closely reflect the framework and principles we have outlined in this report.

The Labor Movement's Principles for Comprehensive Immigration Reform

Immigration reform is a component of a shared prosperity agenda that focuses on improving productivity and quality; limiting wage competition; strengthening labor standards, especially the right of workers to organize and bargain collectively; and providing social safety nets and high quality lifelong education and training for workers and their families. To achieve this goal, immigration reform must fully protect U. S. workers, reduce the exploitation of immigrant workers, and reduce the employers' incentive to hire undocumented workers rather than U.S. workers. The most effective way to do that is for all workers—immigrant and native-born—to have full and complete access to the protection of labor, health and safety and other laws. Comprehensive immigration reform must complement a strong, well resourced and effective labor standards enforcement initiative that prioritizes workers' rights and workplace protections. This approach will ensure that immigration does not depress wages and working conditions or encourage marginal low-wage industries that depend heavily on substandard wages, benefits, and working conditions.

This approach to immigration reform has five major interconnected pieces: (1) an independent commission to assess and manage future flows, based on labor market shortages that are determined on the basis of actual need; (2) a secure and effective worker authorization mechanism; (3) rational operational control of the border; (4) adjustment of status for the current undocumented population; and (5) improvement, not expansion, of temporary worker programs, limited to temporary or seasonal, not permanent, jobs.

Family reunification is an important goal of immigration policy and it is the national interest for it to remain that way. First, families strongly influence individual and national welfare. Families have historically facilitated the assimilation of immigrants into American life. Second, the failure to allow family reunification creates strong pressures for unauthorized immigration, as happened with IRCA's amnesty provisions. Third, families are the most basic learning institutions, teaching children values as well as skills to succeed in school, society, and at work. Finally, families are important economic units that provide valuable sources of entrepreneurship, job training, support for members who are unemployed and information and networking for better labor market information.

The long term solution to uncontrolled immigration is to stop promoting failed globalization policies and encourage just and humane economic integration, which will eliminate the enormous social and economic inequalities at both national and international levels. U.S. immigration policy should consider the effects of immigration reforms on immigrant source countries, especially Mexico. It is in our national interest for Mexico to be a prosperous and democratic country able to provide good jobs for most of its adult population, thereby ameliorating strong pressures for emigration. Much of the emigration from Mexico in recent years resulted from the disruption caused by NAFTA, which displaced millions of Mexicans from subsistence agriculture and enterprises that could not compete in a global market. Thus, an essential component of the long term solution is a fair trade and globalization model that uplifts all workers, promotes the creation of free trade unions around the world, ensures the enforcement of labor rights, and guarantees all workers core labor protections.

1. Future flow

One of the great failures of our current employment-based immigration system is that the level of legal work-based immigration is set arbitrarily by Congress as a product of political compromise—without regard to real labor market needs—and it is rarely updated to reflect changing circumstances or conditions. This failure has allowed unscrupulous employers to manipulate the system to the detriment of workers and reputable employers alike. The system for allocating employment visas—both temporary and permanent—should be depoliticized and placed in the hands of an independent commission that can assess labor market needs on an ongoing basis and—based on a methodology approved by Congress—determine the number of foreign workers to be admitted for employment purposes, based on labor market needs. In designing the new system, and establishing the methodology to be used for assessing labor shortages, the Commission will be required to examine the impact of immigration on the economy, wages, the workforce and business.

2. Worker authorization mechanism

The current system of regulating the employment of unauthorized workers is defunct, ineffective and has failed to curtail illegal immigration. A secure and effective worker authorization mechanism is one that determines employment authorization accurately while providing maximum protection for workers, contains sufficient due process and privacy protections, and prevents discrimination. The verification process must be taken out of the hands of employers, and the mechanism must rely on secure identification methodology. Employers who fail to properly use the system must face strict liability including significant fines and penalties regardless of the immigration status of their workers.

3. Rational operational control of the border

A new immigration system must include rational control of our borders. Border security is clearly very important, but not sufficient, since 40 to 45 percent of unauthorized immigrants did not cross the border unlawfully, but overstayed visas. Border controls therefore must be supplemented by effective work authorization and other components of this framework. An “enforcement-only” policy will not work. Practical border controls balance border enforcement with the other components of this framework and with the reality that over 30 million valid visitors cross our borders each year. Enforcement therefore should respect the dignity and rights of our visitors, as well as residents in border communities. In addition, enforcement authorities must understand that they need cooperation from communities along the border. Border enforcement is likely to be most effective when it focuses on criminal elements and engages immigrants and border community residents in the enforcement effort. Similarly, border enforcement is most effective when it is left to trained professional border patrol agents and not vigilantes or local law enforcement officials—who require cooperation from immigrants to enforce state and local laws.

4. Adjustment of status for the current undocumented population

Immigration reform must include adjustment of status for the current undocumented population. Rounding up and deporting the 12 million or more immigrants who are unlawfully present in the U.S. may make for a good sound bite, but it is not a realistic solution. And if these immigrants are not given adequate incentive to “come out of the shadows” to adjust their status, we will continue to have a large pool of unauthorized workers whom employers will continue to exploit in order to drive down wages and

other standards, to the detriment of all workers. Having access to a large undocumented workforce has allowed employers to create an underground economy, without the basic protections afforded to U.S. citizens and lawful permanent residents, and where employers often misclassify workers as independent contractors, thus evading payroll taxes, which deprives federal, state, and local governments of additional revenue. An inclusive, practical and swift adjustment of status program will raise labor standards for all workers. The adjustment process must be rational, reasonable and accessible and it must be designed to ensure that it will not encourage future illegal immigration.

5. Improvement, not expansion, of temporary worker programs

The United States must improve the administration of existing temporary worker programs, but should not adopt a new “indentured” or “guest worker” initiative. Our country has long recognized that it is not good policy for a democracy to admit large numbers of workers with limited civil and employment rights.

Endnotes

1. The truth is, of course, that nobody really knows how many unauthorized immigrants there are. Over 30 million foreign visitors come to the United States every year, and some will settle as immigrants, but we have no way of knowing how many will do so.
2. Kossoudji and Cobb-Clark (2002) estimate that legalization raises wages by 6%.
3. *Hoffman Plastic Compounds v. NLRB*, 535 U.S. 137 (2002).
4. Labor market experts note that these networkers provide better information about jobs in the United States than is available to low-income residents of the United States.
5. There is a fairly consistent pattern of net domestic population outmigration from large gateway cities like Los Angeles and New York correlated with heavy net immigration flows. Moreover, cities losing low-wage workers often gain well-educated young adults. While the reasons for these countervailing population flows are disputed, the facts are fairly clear and could lead to erroneous conclusions unless these population flows are accounted for (Ley 2007).
6. See Appendix Table A1 for changes in *mean* real incomes between 2000 and 2006.
7. The Migration Policy Institute, for example, finds a close correlation between employment opportunities in the United States and apprehension of unauthorized entrants. (http://www.migrationpolicy.org/pubs/DHS_Feb09.pdf; accessed February 19, 2009)
8. In 2000-05, for example, 9% of Mexican immigrants to the United States left spouses and an average of 2.5 children behind. Migrants from other Central American countries left fewer spouses and children behind, but as the following statistics show, the vast majority does so. See Appendix Table A2.

Undocumented immigrants from Mexico leave slightly more children behind than documented workers. See Appendix Table A3.
9. Because of exceptions, the number of green cards issued averaged 190,000 for 2005-07.
10. For discussions of the economic costs of misclassification, see:
<http://www.law.harvard.edu/programs/lwp/Misclassification%20Report%20Mass.pdf>,
<http://www.law.harvard.edu/programs/lwp/Maine%20Misclassification%20Maine.pdf>,
<http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1009&context=reports>
11. Memorandum from Jared Bernstein and James Lee to AFL-CIO Immigration Task Force, "Measuring Labor Shortages," 2008.
12. For further examples of the exaggerated anecdotal evidence used to justify much larger H-1B visas, see Department of Professional Employees 2008.
13. See memorandum from Ana Avendano to Ray Marshall and Ross Eisenbrey, July 8, 2008.

14. E-Verify fails to confirm 2% to 4 % of citizens and legal residents submitted to the system (Marc Rosenblum, “Discussion of a three-stage alternative to E-Verify,” memorandum to Ross Eisenbrey, January 27, 2009, fn 1).
15. *Aramark Facilities Services v. SEIU*, 530 F. 3d 817 (9th Circ. 2008).
16. See *C.W. Mining Co.*, NLRB Case No. 27-CA-18767-1; 27-CA-19399; 27-CA-19453-1; 27-RC-8326; and 27-CA-19529.
17. See *Crespo v. Energo Corp.* 366 N.J. Supr. 391 (App Div. 2004), *cert denied*, *Crespo v. Energo Corp.* 180 N.J. 151 (2004).
18. Rosenblum memo.
19. *Ibid.*, p. 2.
20. The Citizenship and Immigration Service issues 70 different types of visas that increase the number of foreign workers. See Appendix Table A4 for the types and numbers of non-immigrant admissions in 2005.

Individuals admitted temporarily for specific purposes are expected to leave after six years (H-1B visas), and students are supposed to leave after completing their studies. However, Lindsey Lowell estimates that most “temporary” visa holders become permanent residents, including two-thirds of students and half of workers.

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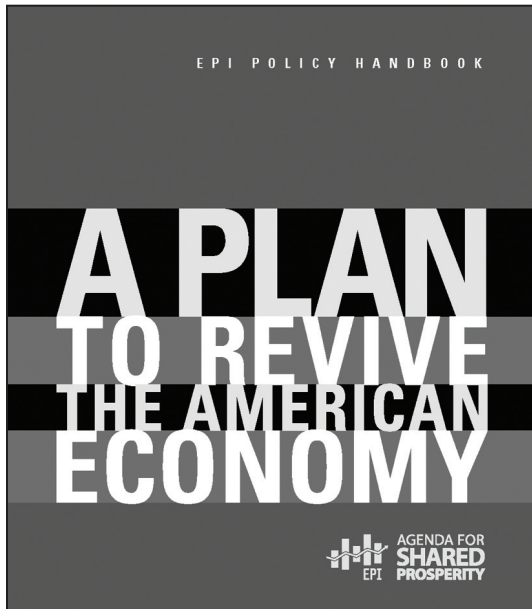
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