

MAKING THE TRANSITION FROM

ILLEGAL TO LEGAL MIGRATION

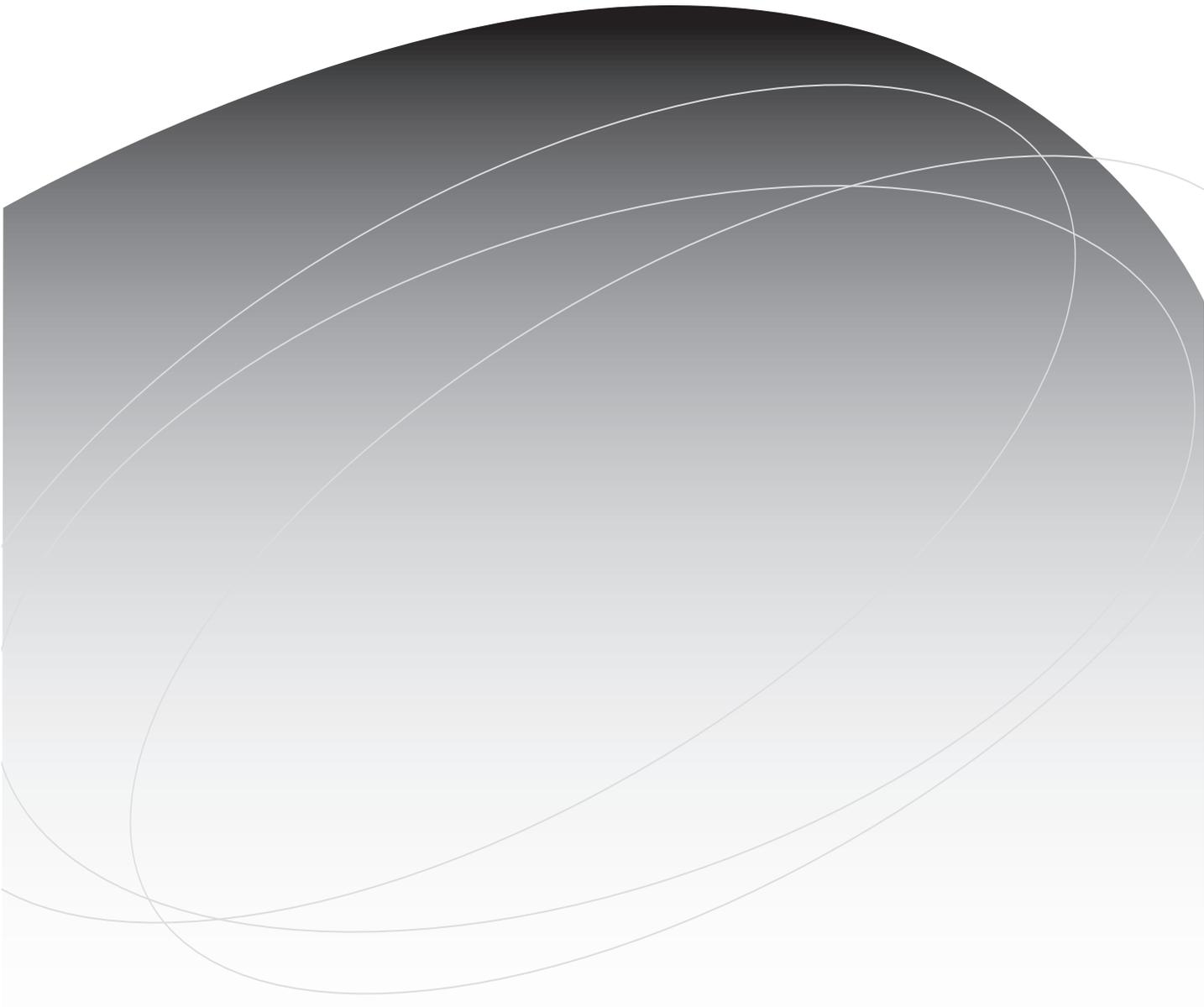
BY STUART ANDERSON

THE NATIONAL FOUNDATION FOR AMERICAN POLICY

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EXECUTIVE SUMMARY

The evidence indicates that the absence of avenues to work legally in the United States is a primary reason for the current levels of illegal immigration. Policy makers grappling with illegal immigration face three choices: 1) maintain the status quo, which is an immigration enforcement-only approach that makes little use of market-based mechanisms; 2) enact legislation to establish new temporary worker visas or improve existing categories; or 3) enact legislation to create new temporary worker visas/improve existing categories *combined* with a transition that addresses those currently in the country illegally.

The study examines the three choices. The status quo or "status quo plus more enforcement" portends no reduction in illegal immigration but rather a continuation of migrant deaths, a black market in labor, and calls for harsher but likely counterproductive enforcement measures. A "guest worker only" approach is similar to the status quo in that it has little chance of being successful, since, among other reasons, legislation to enact a new guest worker program without addressing those in the country illegally is unlikely to become law.

The approach that offers the most realistic opportunity for significant and positive change is one that combines new temporary worker visas with a transition that addresses those currently

in the country illegally. Without such an approach, ten years from now both sides of the debate will still decry the status quo. □

Designing a new approach to reducing illegal immigration would be far easier, it is commonly understood, if America did not have approximately 8 million individuals already living in the country illegally. This problem has stalled progress on the U.S.-Mexico migration talks started by President George W. Bush and Mexican President Vicente Fox. It also remains the most challenging issue facing legislation to move toward new, market-based immigration approaches in agriculture and other industries. Simply put: What do we do about those currently in the country working illegally?

THE CURRENT SITUATION

Since 1986, it has been unlawful for U.S. employers to knowingly hire an individual unauthorized to work in the United States. Beginning in 1990, the U.S. government increased the level of U.S. Border Patrol Agents from 3,600 to nearly 10,000 by the end of the decade. Yet illegal immigration rose by 5.5 million between 1990 and 2000 and, overall, an estimated 8 million individuals today are living in the country illegally.¹ The evidence indicates that current policies are ineffective in addressing illegal immigration. The number of farm workers who have self-reported as "lacking work authorization" rose from 37 percent in the first part of the 1990s to 52 percent by 1997-1998, to 55 percent in 1999-2000, according to the Department of Labor's National Agricultural Workers Survey. This underestimates

unauthorized employment, since at least a portion of farm workers are unlikely to admit to a survey interviewer they are here illegally.²

The status quo concerns more than individuals being employed who are not authorized to work in the United States. The status quo also involves the deaths of many able-bodied young people. In fiscal year (FY) 2003, 340 migrants, primarily from Mexico, died attempting to enter America – approximately one person every day. These figures have remained constant the past four years, with 383 migrant deaths reported in FY 2000, 336 in FY 2001, and 320 in FY 2002. (See Figure 1.) Behind these statistics are more than a thousand stories and more than a thousand families. And the deaths would be much higher if not for the Border Patrol rescuing nearly 3,000 individuals in just the past two years.³

Why do migrant deaths continue? Several schools of thought exist. The Border Patrol primarily blames smugglers for taking desperate individuals to unsafe areas and abandoning them, though the degree to which this occurs as a proportion of migrant deaths or all attempted smugglings cannot be known. Another school of thought is that the migrants themselves, generally adults, bear the responsibility. A third school blames overall U.S. immigration policy and, in particular, the Border Patrol's strategy since 1994 to deter unlawful crossings. Univ. at California San Diego Prof. Wayne Cornelius writes, "The available data suggest that

TABLE 1

MIGRANT DEATHS: FY 2000 – 2003

FISCAL YEAR	MIGRANT DEATHS REPORTED
2000	383
2001	336
2002	320
2003	340

Source: U.S. Border Patrol

the current strategy of border enforcement has resulted in rechanneling flows of unauthorized migrants to more hazardous areas.” He argues that, therefore, increased numbers of migrant deaths are a natural result of the policy, a policy influenced by pressure from Congress.⁴

A general consensus has emerged that the increased risk of death or apprehension has caused many more migrants to stay after making it to the United States, rather than return for frequent trips to Mexico as they may have done in the past. By one estimate tougher enforcement

has lengthened to 9 years the average U.S. stay of a Mexican migrant; in the early 1980s a typical Mexican migrant stayed three years.⁵

A final school of thought, one that generally receives the least attention in the public debate, carries perhaps the most logical explanation for why so many Mexicans are courting death: The lack of options for Mexicans who seek employment in the United States to do so legally. Any rational individual would prefer to visit a U.S. consulate and buy a bus ticket to cross the border rather than pay a smuggler and wade

rivers, climb mountains, or traverse deserts. But faced with an option of working illegally or not at all in America many choose the former, putting aside the inherent risks.

CURRENT LAWS ON TEMPORARY WORK VISAS

Current U.S. law, in practice, is restrictive in offering opportunities for U.S. employers to hire foreign-born individuals to work legally in agriculture and other non-professional fields. While on paper it would appear U.S. farmers and potential agricultural workers should possess ample opportunities by using the H-2A visa category, in reality the category is used sparsely. While in 1956 as many as 445,000 contract laborers from Mexico worked legally in agriculture, fewer than 30,000 workers entered on H-2A visas in 2003.⁶ In Congressional testimony, a former Department of Labor official explained the low usage of H-2A visas by calling the category "cumbersome and litigation-prone."⁷

Under a different category, H-2B visas, individuals may enter to work legally in non-agricultural jobs. However, restrictive interpretations of the governing H-2B statute have generally prevented employers from hiring individuals for jobs other than those that are seasonal or of very short duration. In addition, the category is capped at 66,000 annually, which, based on the number

of individuals working without authorization in hospitality, construction, food services, and other industries, appears well below the demand for such labor. A different cap limits sponsorship for permanent residence (green cards) to 10,000 per year for employment-based immigrants who do not possess the equivalent of an undergraduate degree or higher.⁸

The evidence indicates that the absence of avenues to work legally in the United States is a primary reason for the current levels of illegal immigration. A report by the National Foundation for American Policy entitled *The Impact of Agricultural Guest Worker Programs on Illegal Immigration* concluded, "By providing a legal path to entry for Mexican farm workers the bracero program significantly reduced illegal immigration. The end of the bracero program in 1964 (and its curtailment in 1960) saw the beginning of the increases in illegal immigration that we see up to the present day." It is recognized that the number of INS apprehensions are an important indicator of the illegal flow and that, in general, apprehension numbers drop when the flow of illegal immigration decreases. From 1964 – when the bracero program ended – to 1976, INS apprehensions increased from 86,597 to 875,915 – a more than 1,000 percent increase, indicating a significant rise in illegal immigration. The report found that "Additional factors in illegal immigration rising during this period

included economic conditions in Mexico and the lack of a useable temporary visa category for lesser skilled non-agricultural jobs.”⁹

This is not to say that the bracero program was without controversy or that workers who entered through the program did not experience problems or even hardships. The point is that when the bracero program operated at its height, illegal entry to the United States was low. After the program was curtailed and later terminated, illegal immigration rose steadily. No one advocates resurrecting the bracero program in its various forms. Yet a revised H-2A visa category that meets the needs of both employers and employees would make a significant contribution to reducing illegal immigration in agriculture.

CURRENT LEGISLATION

To understand the options before policy makers it is useful to summarize the primary legislation under discussion in Congress. As part of an effort to manage the transition from illegal to legal migration, the bills each use the concept of “earned adjustment,” meaning that individuals in unlawful status may earn a green card by prospective work or economic contributions to the United States.

The Agricultural Job Opportunity, Benefits, and Security Act of 2003, or AgJobs, (S. 1645 and H.R. 3142) would make a number of reforms to improve

the H-2A visa category, while also attempting a transition from the current primarily illegal migration to one of legal migration. First, the H-2A reforms would streamline the hiring process to overcome what is considered the arbitrariness of the Department of Labor bureaucracy. For example, employers say that a large percentage of applications to DOL are approved after the end of a farmer’s harvest period. S. 1645 replaces the current approach with on-line job postings, local print ads, notices to previously hired domestic workers and, most importantly, an attestation system designed to allow hires within days, rather than months. Second, litigation or fear of it has prevented many farmers from even trying to hire workers on H-2A visas. The bill seeks to eliminate these concerns by preempting suits in state courts, allowing federal court claims based only on measurable economic losses, and permitting mediation when requested by either party. Third, in addition to other changes, S. 1645 and H.R. 3142 reform the current “adverse effect wage rate” policy that, essentially, mandates higher than market wages, thus currently providing a disincentive for hiring people on H-2A visas. The bill also contains several measures aimed at protecting workers, including whistleblower protections, housing provisions, and travel reimbursements.

The transition from the current system is contained in two parts. In the first part, the legislation would allow individuals with a minimum of 100 days of

proven agricultural work during a 12-month period prior to the bill's introduction to be granted temporary legal status. Those workers can choose to apply for permanent residence by working in agriculture a certain number of hours over three of the next 6 years.

The bill, authored by Senators Larry Craig (R-ID) and Ted Kennedy (D-MA) and Representatives Chris Cannon (R-UT) and Howard Berman (D-CA) in the House, is believed to be the work of almost 7 years of back and forth negotiations among growers and farm worker advocates on the outside and Republican and Democratic members inside Congress. The legislation has 45 Senate cosponsors and 69 House cosponsors.

Another bill that has attracted considerable attention is H.R. 2899 (S. 1461 in the Senate), introduced by Reps. Jim Kolbe (R-AZ) and Jeff Flake (R-AZ) and Senator John McCain (R-AZ), which has 7 House cosponsors and two Senate cosponsors. H.R. 2899/S. 1461 is ambitious. The bill would create a new H-4A category for temporary admission to work in the United States. Seeking to rectify the absence of a useable less-skilled visa category, it would allow a three-year admission (renewable for an additional three years) and without the current regulatory restrictions imposed by the H-2B category on the types of employment a visa holder may pursue. The H-4A category contains an important worker protection – portability. The bill states that the temporary visa holder (nonimmigrant) "is authorized to

accept new employment upon the filing by the prospective employer of a new petition on behalf of such nonimmigrant . . ."¹⁰

Another important aspect of the bill would allow individuals working on the new temporary visa to be sponsored by employers for permanent residence without the current restriction of the 10,000 annual cap, which currently results in multi-year backlogs. Today, employers routinely sponsor individuals in higher-skilled occupations for green cards, yet individuals in other types of jobs are, in practice, prohibited.

The bill contains a few provisions that might warrant being modified. For example, it levies a \$500 fee on companies for each temporary worker hired in the new category, which rises to \$1,000 for companies with more than 500 employees. If the purpose of the bill is to move more employers, particularly small businesses, to a stable, legal workforce, it's possible such fees could deter hiring in the low-margin, relatively lower-salary industries, including restaurant and hospitality industries. The \$1,000 fee imposed on employers for foreign-born professionals on H-1B visas represents a smaller fraction of the overall cost of hiring such individuals, since many such professionals earn \$60,000 or more a year in total compensation. The bill also largely transports from the H-1B law language on displacement of U.S. workers that has applied only to employers with a high percentage of its workforce on H-1B visas.

The bill would require a "medical examination" for H-4B visa applicants, generally not required for other temporary visa holders, which could lead to unintended processing delays or extra costs. These matters can be addressed at a later point in the process and represent only a relatively small part of the overall bill.

Most importantly, a significant effort at a transition from an illegal to a legal workforce is made in H.R. 2899/S. 1461. The bill would allow those in the country working as of August 1, 2003 to apply for temporary legal status (H-4B) for a period of three years by paying \$1,500 (or wage garnishment for that amount). After the three years of work, individuals in H-4B status may seek permanent residence. The current 10,000 annual cap on the "other workers" category of employment-based immigrant visas would not apply for this purpose.

A third bill (S. 1387), introduced by Senator John Cornyn (R-TX) with one Senate co-sponsor, would establish a guest worker program with any country that signs an agreement to undertake certain obligations. It would allow seasonal guest workers (270 days in a year) and "nonseasonal" guest workers, who may enter for 12 months with a renewal to no more than three years total. The bill requires an attestation to be filed with the Department of Labor that "there are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services involved in the employer's petition." It

requires advertising a job opportunity for 14 days and assuring in the application that U.S. workers have been or will be offered the job if they are equally or better qualified. The bill would also establish "guest worker investment accounts."

S. 1387 would allow individuals illegally in the country to be "absolved" for their unlawful immigration status if they become a guest worker. In addition, "If the alien has participated in the guest worker program and worked in the United States for a continuous 3-year period" he or she will get "priority for adjustment of status" when applying for permanent residence. However, in an important caveat, the bill states, "An alien guest worker can only apply for legal permanent residency when that alien returns to the guest worker program country."¹¹

The provisions on adjustment of status in the bill may be problematic. A requirement that individuals leave the country without an accompanying assurance that they will be able to return shortly (after their paperwork is completed) could likely deter workers now in the country illegally from stepping forward and using the new system. Under the bill it appears the employees may not even know whether they would be eligible to return at all. In a departure from current law the bill would authorize the Secretary of Homeland Security to set the annual number of individuals who could be adjusted to permanent residence through the guest worker program "based on economic

determinations made by the Secretary of Labor.” There is no evidence that the U.S. government has an ability to “set” the right number of workers that employers would need in a given year.

Employees would likely need to relinquish their jobs and wait in their home countries while the U.S. government processed (or waited or declined to process) their applications for permanent residence. Today, unless per country limits or other numerical restrictions apply, individuals receive immigrant visas on a first come, first serve basis. In S. 1387, a complicated “evaluation” system would be established to set the order of priority for gaining permanent residence on a points system. If an individual is gainfully employed, it is not clear why this point system is relevant, since the person has already demonstrated economic worth to the country and his or her employer. Still, the bill is an honest attempt to deal with a serious issue in a fundamental way.

While these three bills represent the primary vehicles in Congress to enact change, they are only part of the choice facing policy makers today.

OPTIONS FOR POLICY MAKERS: STATUS QUO OR CHANGE?

The first option for policy makers is to maintain the status quo of an immigration enforcement-only approach that makes little use of new or expanded market-based visa categories. While immigration

opponents would deny that their position is the status quo, it is difficult to argue that their position goes much beyond that. True, they would argue for increased immigration enforcement, including in the interior, but it would still be “more of the same plus.”

Immigration opponents would seek to make denying employment to those not permitted to work in the country perhaps the nation’s top priority. Yet even within immigration enforcement that is likely never to be the case. In an era when national security threats represent a far greater danger than waiters and farm workers without green cards is that a likely government position? At this point, in light of other priorities and finite resources, calling for more and more enforcement against U.S. employers appears as more of a rhetorical device, than a genuine policy proposal. As the *Wall Street Journal* recently editorialized, “Short of doing things that would offend American values – such as threatening to shoot border crossers – we can’t stop immigrants from coming.”¹² However, we can funnel many of them into legal channels.

That is not to say immigration law enforcement is not important or that it could not be more effective. In fact, the experience of the 1950s is that a reasonable law enforcement deterrent is necessary to enable temporary work visas to reduce illegal entry. Removing from the flow across the border those individuals who would now possess valid visas to work legally in the country will make

the Border Patrol's job much more manageable. When at a Congressional hearing in the 1950s, a top INS official was asked what would happen to illegal immigration if the bracero program ended, he replied, "We can't do the impossible, Mr. Congressman."¹³ However, by not allowing the effective safety valve of legal visas, it appears that is precisely what the Border Patrol has been asked to do.

A "GUEST WORKER ONLY" APPROACH

If, as is the case, a more employer-friendly agricultural work visa category will reduce illegal immigration, then shouldn't Members of Congress support a reformed guest worker program and only that? Wouldn't that be more politically palatable? For a number of reasons the answer is "no." Whether one likes it or not, ignoring the situation of those in the country illegally is likely to lead to more gridlock and perpetuating the status quo. Making the difficult political choices regarding those already here is in many ways the price of real reform.

First, for employers, in the case of the AgJobs Act in particular, a transition period is needed to ensure that any reformed agricultural visa category works as anticipated. The AgJobs Act, for example, would allow those who worked a specified period in agriculture in the past (100 or more days over a

12-month period prior to the bill's introduction) to transfer to legal status and achieve an opportunity for a green card. That opportunity would come by working 2,060 hours or 360 work days in U.S. agriculture over a 6-year period. They must work a minimum of 75 work days in each of three years (ending in August 31, 2006) and 240 days total for three of the 6 years after having converted to temporary (legal) resident status. (It is purely voluntary for the individuals to seek a green card under the bill.) This period will allow both employees and employers to adopt to the new visa system. Moreover, it will allow time for the consular and immigration services to build up the additional capacity that may be necessary to facilitate increased legal entry via valid work visas.

Second, legislation that reforms the H-2A visa category but does not address those already in the country working in agriculture may doom the reforms themselves. The existence of many individuals who are here illegally who simply continue to work illegally in agriculture (but may appear legal to employers) will likely discourage employers from attempting to use the H-2A category if they have never done so before. From the workers' perspective it would appear we are just adding extra legal workers on top of a stable roster of unauthorized workers and have perpetuated, not changed, the status quo. Many proven and capable workers will stay in unauthorized status (again without their employers' knowledge), which may

further dissuade employers from seeking workers through the reformed H-2A category.

A third reason a "guest worker only" approach is undesirable is that it possesses little or no chance of becoming law. An attempt to reform H-2A alone (without any adjustment provisions) lost in the U.S. House of Representatives in 1996 by a significant margin. Many Democrats and their allies in outside organizations support the AgJobs bill, in large part, due to the inclusion of the "earned adjustment" provisions that allow individuals to move toward lawful status. Remove those provisions and support from Democrats and their allies will dissipate. After many years of negotiations, farm worker legislation has achieved support from growers, major agricultural organizations, and the United Farm Workers union, as well as members with views as diverse as Senators Craig and Kennedy and Representatives Cannon and Berman. At this point, it appears, many would view an attempt to replace AgJobs with a "guest worker only" bill as an effort to insert a "poison pill" into the legislative process. "Agriculture's experience of the past eight years proves that largely partisan guest worker-only reform proposals will not attract sufficient political support to be enacted," wrote the National Council of Agricultural Employers and the Agriculture Coalition for Immigration Reform in a recent letter to the House Judiciary Committee.¹⁴

MAKING THE TRANSITION

Supporters of these bills believe that new measures on temporary visas will control the future flow of illegal immigration. Yet they also are certain that it is necessary to address the situation of those already here. The evidence indicates that combining the two approaches attracts a broader base of political support and substantively holds greater promise for reducing migrant deaths and illegal immigration. Marrying new temporary work visas with the concept of earned adjustment, supporters believe, is pragmatic and fair-minded. However, policy foes oppose any effort to make the type of transition the advocates of the bills desire. The next section examines those arguments.

ARGUMENTS AGAINST A TRANSITION FROM ILLEGAL TO LEGAL MIGRATION

A primary argument used today against any transition from illegal to legal migration is that such legislation would be "rewarding" illegality. Simply put, the argument is that those who entered to work illegally in the past should not be allowed to move to legal status. It is difficult to determine if this is framed as a moral argument, an appeal to law and order, or a rhetorical device to deflect a policy choice they do not favor. In either of these cases, the argument must be addressed.

Daniel Griswold, associate director of the Cato Institute's Center for Trade Policy Studies, addresses this issue in his study *Willing Workers: Fixing the Problem of Illegal Mexican Migration to the United States*. He writes, "Laws should be obeyed, but laws should also be in fundamental harmony with how most people choose to live their lives. When large numbers of otherwise normal and law-abiding people routinely violate a law, it signals that the law itself may be flawed."¹⁵

Griswold goes on to list examples of laws that proved to be unenforceable without changes. He cites the 55-mile-per-hour speed limit, which was regularly flouted until Congress permitted states to set higher limits based on local driving conditions. Griswold and others have pointed to the prohibition on alcohol from 1920 to 1933, which encouraged the rise of violent smuggling gangs. Anne Applebaum of the *Washington Post* recently described how two rival human smuggling gangs from Mexico engaged in a shootout across the border into Arizona that resulted in several deaths.¹⁶ And many states have allowed those who failed to pay their taxes a window in which to come forward and correct this illegal behavior without fine or penalty. These measures are generally adopted without controversy.

Another argument made against a transition from illegal to legal migration is that providing an eventual green card to those who worked here

illegally is not fair to those who waited patiently to immigrate legally to the United States. However, in the case of those paying a fine or, more specifically, those who must work for a specific number of years to be eligible for a green card, the individuals are not "rewarded" without cost. More importantly, the concern about fairness to those waiting legally to immigrate would appear more genuine if those making this argument were not generally opposed to people immigrating legally either. The primary anti-immigration organizations and members of Congress who make this argument favor eliminating almost all the immigration categories under which individuals could come to America legally in the first place.

EARNED ADJUSTMENT VS. AMNESTY

A common tactic in a debate is to attach a perceived unpopular label to an opponent's measure whether or not the label is accurate. Today, opponents label as "amnesty" nearly any bills or proposals to reform immigration that are not restrictive. A more serious policy discussion would ask the question: Is a future work requirement the same as amnesty?

Webster's New World Dictionary defines an amnesty as "a general pardon, especially for political offenses against a government."¹⁷ When a government declares an amnesty it generally

requires no further action on the part of those receiving the amnesty. Similarly when a Governor or President issues a pardon it is unusual that it requires a fine or anything of that nature.

While people can debate this, it appears that requiring additional work, particularly for many years, and perhaps even in jobs that many people would find arduous, difficult, or distasteful, does not meet the definition of amnesty. The AgJobs Act requires individuals to work in often sweltering fields over the course of at least three years in the future. The measures sponsored by Reps. Kolbe, Flake, and Senator McCain, as well as Senator Cornyn's measure, require a future work requirement of three years in the United States in often relatively low-paying jobs. In the Kolbe-Flake-McCain bill the individuals also must pay a \$1,500 fine to move from unlawful to lawful temporary status. In contrast, the 1986 Immigration Reform and Control Act (IRCA) did not require any future work requirement but rather awarded permanent residence to those who maintained a continuous presence in the United States within certain dates and met certain other basic criteria.

Another aspect of the future work requirement, or earned adjustment, that has received little attention is that mandating work in the future to receive an immigration benefit should reduce concerns about fraud. It has been argued that IRCA led to fraud among a number of those who did

not meet the requirements of the act. It has been difficult to document the extent of fraud. However, as noted, the 1986 law did not require any future work, particularly not three years of work, to receive the benefit. In the case of the Ag Jobs Act, for example, informing someone they must work three years in agriculture to earn a green card may deter those who might have sought a benefit to which they were not entitled.

Even given that current legislation differs markedly from IRCA in 1986, a question can still be asked: Did the 1986 law lead to increased illegal immigration? A study by the Federal Reserve Bank of Atlanta that examined INS apprehensions data before and after 1986 found that amnesty does not increase illegal immigration. "[I]t appears that amnesty programs do not encourage illegal immigration. If anything, IRCA reduced the number of illegal immigrants in the short run, perhaps because potential migrants thought that it would be more difficult to cross the border or get a job in the United States after the law was passed," concluded authors Pia M. Orrenius (Federal Reserve Bank of Dallas) and Madeline Zavodny (Federal Reserve Bank of Atlanta). "An amnesty program also does not appear to encourage illegal immigration in the long run in the hopes of another amnesty program; we do not find a significant difference between apprehensions after the IRCA amnesty expired and before the program was created."¹⁸

Even if critics concede that the Federal Reserve Bank of Atlanta study is correct, they might argue that the 1986 law failed to reduce or halt illegal immigration. In fact, the study concludes that "IRCA does not appear to have discouraged illegal immigration in the long run."¹⁹ Yet this seems more an argument against the status quo than against any particular piece of legislation. The status quo of increased enforcement and employer sanctions instituted in 1986 has not succeeded in reducing illegal immigration. Illegal immigration has increased since 1986, in large part, due to the absence of avenues available for individuals to enter and work legally in the United States. Seventeen years ago, disputes between the House and Senate resulted in no genuine reforms to the agricultural guest worker program, resulting in no measures to ensure that the future flow of agricultural workers would migrate legally and safely. Failure to include or follow through on those types of mechanisms in 1986 or later made inevitable the current situation with regards to illegal immigration.

successful, since, among other reasons, legislation to enact a new guest worker program without addressing those in the country illegally is unlikely to become law. The approach that offers the most realistic opportunity for significant and positive change is one that combines new temporary worker visas with a transition that addresses those currently in the country illegally. Without such an approach, ten years from now both sides of the debate will still decry the status quo. □

CONCLUSION

The status quo or "status quo plus more enforcement" portends no reduction in illegal immigration but rather a continuation of migrant deaths, a black market in labor, and calls for harsher but likely counterproductive enforcement measures. A "guest worker only" approach is similar to the status quo in that it has little chance of being

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NATIONAL FOUNDATION FOR AMERICAN POLICY

Started in 2003, the National Foundation for American Policy (NFAP) is a non-profit, non-partisan organization dedicated to public policy research on trade, immigration, education, and other issues of national importance. Its Advisory Board members include Columbia University economist Jagdish Bhagwati, Ohio University economist Richard Vedder, former INS Commissioner Jim Ziglar, Rep. Guy Vander Jagt (ret.), Cesar Conda, until recently Vice President Dick Cheney's chief domestic policy adviser, and former Reagan and Bush Administration official Jim Pitts.

ENDNOTES

¹*Estimates of the Unauthorized Immigrant Population Residing in the United States: 1990 to 2000*, Immigration and Naturalization Service, January 2003.

²*Findings from the National Agricultural Workers Survey (NAWS) 1997-1998*, Research Report No. 8, U.S. Department of Labor Office of the Assistant Secretary for Policy, Office of Program Economics, March 2000, p. 22; Testimony of Demetrios G. Papademetriou, *Meeting the Workforce Needs of American Agriculture, Farm Workers, and the U.S. Economy*, Hearing Before the Subcommittee on Immigration of the Committee on the Judiciary, United States Senate, May 12, 1999; and information from the Office of the Assistant Secretary for Policy at the U.S. Department of Labor.

³U.S. Border Patrol. Border Patrol Agents rescued 1,771 migrants in FY 2002 and 1,214 in FY 2003.

⁴Wayne Cornelius, "Death at the Border: The Efficacy and Unintended Consequences of U.S. Immigration Control Policy 1993-2000," *Population and Development Review*, vol. 27, no. 4, December 2001.

⁵Eduardo Porter, "Tighter Border Yields Odd Result: More Illegals Stay," *The Wall Street Journal*, October 10, 2003, p. 1.

⁶U.S. Department of State; Congressional Research Service, *Temporary Worker Programs: Background and Issues*. A report prepared at the request of Senator Edward M. Kennedy, Chairman, Committee on the Judiciary, United States Senate, for the use of the Select Commission on Immigration and Refugee Policy, February 1980.

⁷Testimony of John R. Hancock, Subcommittee on Immigration and Claims of House Committee on the Judiciary, September 24, 1997. Hancock, who was formerly the Department of Labor's Chief of Agricultural Certification Unit responsible for administration of the H-2 program, testified, "The current program with its multiple regulations and related requirements is too complex for the average grower to comprehend and use without the aid of a good lawyer or experienced agent. The H-2A program is not currently a reliable mechanism to meet labor needs in situations where domestic workers are not available."

⁸Under INA Section 203(b)(3)(A)(iii) "Other workers" are defined as "Other qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States." Employment-based immigrants with a baccalaureate degree or higher enter through categories with higher annual ceilings.

⁹Stuart Anderson, *The Impact of Agricultural Guest Worker Programs on Illegal Immigration*, National Foundation for American Policy, November 2003, pp. 2-3. "An internal INS report found that apprehensions of adult male Mexican agricultural workers increased by 600 percent between 1965 and 1970, which helped demonstrate the effect terminating the bracero program had on illegal immigration."

¹⁰Text of H.R. 2899/S. 1461.

¹¹Text of S. 1397.

¹²"Viva Work Visas," Review and Outlook, *The Wall Street Journal*, November 12, 2003.

¹³U.S. Congress, House Committee on Agriculture, Subcommittee on Equipment, Supplies, and Manpower, 1958, p. 450, cited in Kitty Calavita, *Inside the State*, Routledge, Chapman, and Hall, Inc., New York, 1992, p. 85.

¹⁴Letter to the House Judiciary Committee, National Council of Agricultural Employers and the Agriculture Coalition for Immigration Reform, November 14, 2003.

¹⁵Daniel Griswold, *Willing Workers: Fixing the Problem of Illegal Mexican Migration to the United States*, the Cato Institute, October 15, 2002, p. 18.

¹⁶Anne Applebaum, "Open-and-Shut Society," *The Washington Post*, November 13, 2003.

¹⁷*Webster's New World Dictionary*, second college edition, Prentice Hall Press, 1986, p. 45.

¹⁸Pia M. Orrenius and Madeline Zavodny, *Do Amnesty Programs Encourage Illegal Immigration? Evidence from the Immigration Reform and Control Act (IRCA)*, Federal Reserve Bank of Atlanta, Working Paper 2001-19, November 2001, pp. 14-15.

¹⁹*Ibid.*, p. 15.

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