

## S U M M A R Y

In the debate on US immigration reform, a number of legislative proposals have been introduced. To be effective, reforms must take into account the lessons learned from implementing the Immigration Reform and Control Act of 1986 (IRCA).

This policy brief summarizes these lessons learned as follows:

- The robust and growing demand for work and family reunification visas must be incorporated into new policies;
- Legalization should not be done halfway;
- Reducing incentives for fraud should be a top policy goal; and
- Migration is a complex phenomenon that cannot be managed unilaterally; it requires cooperation among neighboring countries.

The policy brief argues that there are three “E”s required to achieve stable reform:

- Enforcement that devises smarter border and interior controls that are consistent with America’s values, temperament, and philosophy of government powers;
- Expanded numbers of visas that address the continuing demand, especially from citizens of the countries on America’s borders; and
- Earned regularization that offers a realistic and fair opportunity to the unauthorized resident population in the United States to earn lawful permanent status.

# Reflections on Restoring Integrity to the United States Immigration System: A Personal Vision

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## INTRODUCTION

In his far-reaching statement of January 7, 2004, President George W. Bush returned to one of the earliest themes of his presidency, and to one of the country’s most intractable policy and political dilemmas: how to better manage the United States’ immigration system. Echoing the refrain of “safe, orderly, and legal” immigration articulated at his first meeting with Mexico’s President Vicente Fox on February 16, 2001, Mr. Bush acknowledged again that the United States values and relies on immigrants. Yet, he argued, because the immigration system is so broken, “We see millions of hard-working men and women condemned to fear and insecurity in a massive, undocumented economy”, in “jobs American citizens are not filling.”

Mr. Bush’s prescription? A huge temporary worker program that would “match willing foreign workers with willing American employers”; be open to currently unauthorized, as well as new, immigrants; and would roll forward in three year intervals. With this proposal, the president jump-started a stalled national conversation on the role of immigrants in the US economy and society, and laid out the way forward for immigration reform.

*Making immigration changes that are comprehensive and will serve the national interest will require the radical reengineering of a highly technical, over-tweaked system, built on outdated ideas and the inconsistencies of political expedience, conflicting impulses, and delicate compromises over many decades.*

Twenty months later, the presidential rhetoric of 2004 has remained just that – rhetoric. The president picked up the reform talk at the 2005 State of the Union, and has come back to it intermittently since then. In late spring, the White House created expectations once more with the impan-

neling of another working group, this time a “principals’ group.” Rumors that this latest process would lead to a fleshing out of the administration’s position by late June/early July have proved baseless. Instead, the administration seems to be moving away from using its political capital to promote specific reforms and toward exhorting Congress to act.

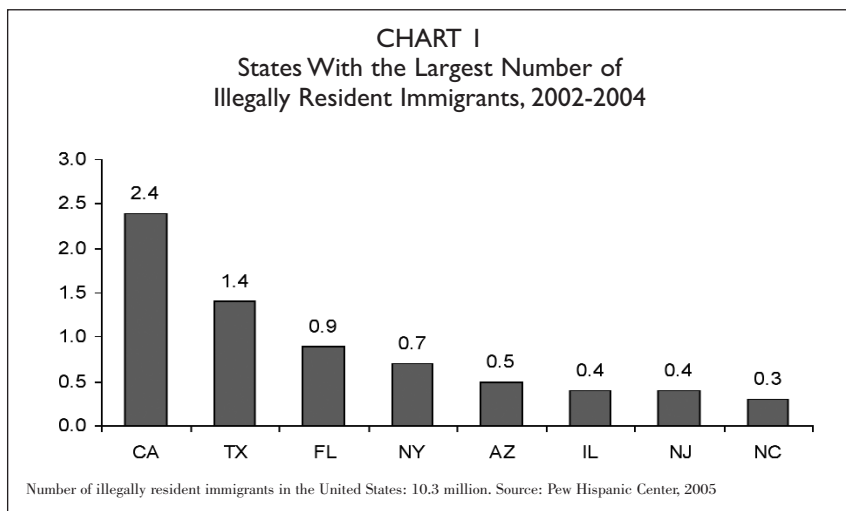
In many ways, Congress, or at least the US Senate, has taken up the immigration reform cause in the form of two dramatically different legislative proposals.

The first was introduced in May by Senators John McCain (R-AZ) and Edward Kennedy (D-MA), and Representatives Jim Kolbe (R-AZ), Jeff Flake (R-AZ) and Luis Gutierrez (D-IL). The second was introduced in July by Senators John Cornyn (R-TX) and Jon Kyl (R-AZ). Both bills attempt to be “comprehensive” but offer sharply contrasting

views on two key elements of reform: how to treat the unauthorized population, how much to invest, and how sharply to focus on enforcement.

The House Republican leadership, on the other hand, seems to be taking a far more deliberate route to reform, apparently focusing on reaching a degree of consensus on key issues before introducing legislation. In the meanwhile, the declaration of states of immigration emergency by the Democratic governors of New Mexico and Arizona in August 2005 will likely catapult immigration reform — albeit focusing on border and other immigration control issues first — to the top of the political agenda as soon as Washington “opens up for business” again after the Labor Day holiday.

Describing the immigration system as broken is fully consistent with the facts: There are currently close to 11 million unauthorized immigrants in the country. Over half of them live in just four states — California (with more than a quarter of the total), followed by Texas, Florida, and New York (see Chart 1).



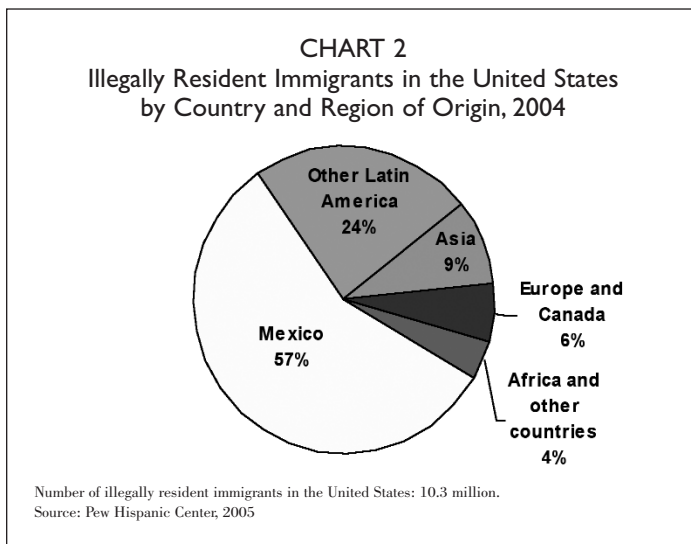
Furthermore, about half-a-million new unauthorized immigrants (the majority from Mexico) are added to our economy and society each year. They help swell an underground population that is mostly Mexican, but also includes large numbers of Central and South Americans, Asians, and significant numbers from the rest of the world (see Chart 2).

Making immigration changes that are comprehensive and will serve the national interest will require the radical reengineering of a highly technical, over-tweaked system, built on outdated ideas and the inconsistencies of political expedience, conflicting impulses, and delicate compromises over many decades. Adding to the challenge, reform will need to be bipartisan in what is a highly polarized debate. No major immigration legislation has ever become law without a truly bipartisan effort. Furthermore, few additional public resources are likely to be allocated for regulation and enforcement. Finally, public attitudes are ambivalent at best towards both immigration and immigrants. It is a daunting task, and one of the most urgent facing the United States today.

This policy brief examines and reflects upon lessons learned from the last major attempt made in 1986 to resolve the problem of illegal immigration, and makes recommendations for immigration policymaking and management.

## Lessons from the Immigration Reform and Control Act of 1986 (IRCA)

The last time the United States attempted large-scale immigration reform, the result was



the Immigration Reform and Control Act (IRCA) of 1986. It took a commission of cabinet secretaries and members of Congress three years (1978 to 1981) to settle on the outlines of reform. Another five years and dozens of congressional hearings, consultations, and briefings ensued before IRCA became law. In the process, the scope of the legislation was narrowed and changed in ways that set the course for its effectiveness.

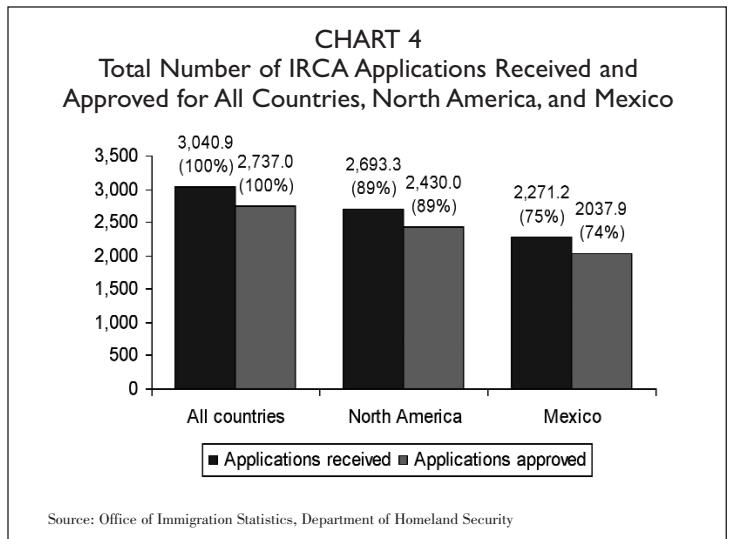
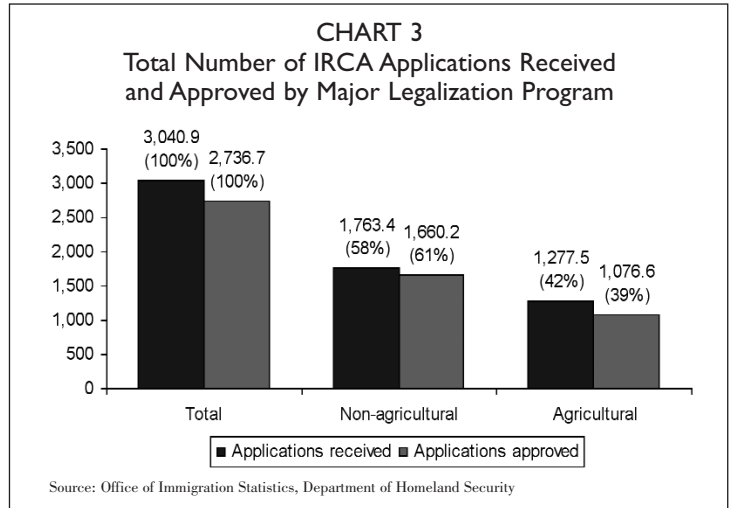
IRCA's objective was to address illegal immigration. It established a three-pronged approach to the issue that its sponsors dubbed the "three-legged stool":

*From the standpoint of both human rights and economic objectives, the 1986 reforms were successful in many ways.*

- It created a process whereby more than 2.7 million illegally resident foreigners who met a variety of requirements gained lawful permanent residence (LPR or "green card") status. For most, the key prerequisite was residence in the United States for five or more years. For agricultural workers, however, ongoing or

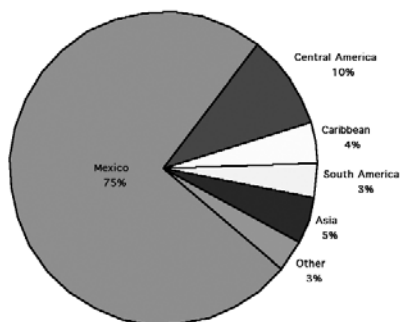
recent work in the fruit, vegetable, and horticulture industries was the main requirement (see Chart 3). The legalization process took up to three years to complete (with different evidentiary standards for different groups of unauthorized residents) and ultimately led to green cards for approximately 90 percent of the applicants. This represented about half of the population estimated to be in the United States illegally at the time. Three-quarters of those legalized were Mexicans; Central Americans were the next largest group at 10 percent of the total (see Charts 4 and 5). More than half of the legalized population resided in California, followed by Texas (with 15 percent), New York, Illinois, and Florida (see Chart 6).

- IRCA banned the hiring of foreigners who did not have work authorization and established a graduated scale of civil and criminal penalties for employers who broke the rules. Up to that time, it had been illegal for a foreigner to be in the United States without authorization, but it was not illegal for an employer to hire an illegally resident foreigner. This legislative oddity went back to 1952 and was known as the Texas Proviso.
- The law called for stronger border enforcement, but was not accompanied by significant new resources until the mid-1990s. From the standpoint of both human rights



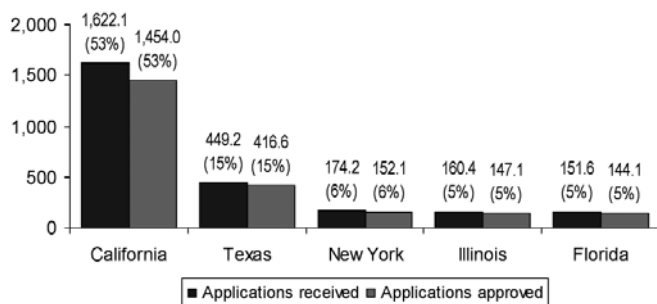
and economic objectives, the 1986 reforms were successful in many ways. Millions of hard-working, law-abiding people came “out of the shadows” with no disruption to the economy. Two comprehensive government reports on the labor market adjustments of the legalized population (based on a large longitudinal sample taken roughly two and five years after IRCA) showed that most assumptions about the beneficial

**CHART 5**  
Approved IRCA Applications by Area of Origin



The total number of IRCA applications approved was 2,736,717.  
Source: Office of Immigration Statistics, Department of Homeland Security

**CHART 6**  
States With the Largest Number of IRCA Applications Received and Approved



The total number of IRCA applications received was 3,040,948. The total number of IRCA applications approved was 2,736,717. Source: Office of Immigration Statistics, Department of Homeland Security.

**Lesson #1:** The robust and growing demand for work and family reunification visas must be incorporated into new policies.

### History

Both the principles and basic architecture of reform reflected in IRCA were conceived during the difficult economic times of the late 1970s and early 1980s. This was a period of high unemployment, even higher interest rates, and a general sense of malaise — a period in which the nation’s outlook was largely defined by limits and fear, rather than confidence in the future and optimism about the United States’ role in it.

By the time IRCA was enacted in 1986, however, the economy had rebounded and national confidence was running high. Emerging labor shortages and skill mismatches, due both to geography and the shortcoming of educational and training institutions, were already becoming the dominant concerns. IRCA was conceived in one era but

effects of legal status on the life chances of that population were validated.

In retrospect, however, the reforms did little to right the nation’s regulatory and interior enforcement or otherwise control future illegal immigration flows. Thus, it is important to draw out the key lessons from this earlier experience with broad immigration reform and legalization.

enacted in a different one.

As a result, it failed to address the ongoing and increasing demand for foreign workers and additional family reunification visas. These demands were partly, if inadequately, addressed in the agricultural area and in subsequent legislation in 1988 and 1990. However, the fixes were too little, too late, and were diluted by too many political compromises.

es. This was especially true in regard to lower-skilled worker visas, whose numbers were limited in 1990 to 10,000 per year and have since been reduced to 5,000.

No adjustments whatsoever were made to the visa system in IRCA, except for certain forms of mostly unskilled temporary labor (the H-2 category). Legislators instead operated on the notion that the labor market did not need many foreign workers and that employers could be “weaned” from their already “too high” reliance on unauthorized foreign workers through the combination of generosity (legalization) and tough love (employer sanctions.)

Few legislators or observers during that era either foresaw, or were ready to confront, the growing reliance of many sectors of the economy on immigrant labor. The role immigrants were playing in the economy had already become structural. As such, this dependence was becoming ever more deeply embedded in increasing segments of the economy and in the way American society was organizing itself. Employer sanctions, IRCA’s principal contribution to immigration enforcement, did not succeed in reversing the increasingly voracious demand for workers willing to do jobs that few Americans were eager to do then and are even more reluctant to do now.

Penalizing employers for hiring unauthorized workers is a European — more precisely, French — policy idea that dates back to the 1930s. It has never worked particularly well for the Europeans, despite a tradition of government regulation of labor markets; large, specialized enforcement bureaucracies; and, in some instances, special administrative courts to prosecute employers who violate immigration and labor protection laws. In fact, in several European economies, such as Germany, despite the aggressive enforcement of employer sanctions, the underground economy has

grown in the last five years at a rate of about five percent annually, fed in part through illegal immigration.

Strengthened border enforcement was the other enforcement component of the 1986 law’s provisions for “regaining control” over illegal immigration. New enforcement methodologies and large additional investments on border controls did not begin to be put in place until the mid-1990s. By then, habits of illegal migration from Mexico had resumed their pre-1986 patterns, and the increasing demand for low-skill labor made the task of controlling illegal immigration through enforcement measures alone all but impossible.

### **Reflections**

There are several important lessons from this experience. One is the need for legislation that not only addresses current economic needs, but also anticipates those of the future. This may be too tall an order in systems that separate executive from legislative functions. The legislative processes are lengthy and often result in addressing last season’s problem. Building some degree of flexibility into the immigration system, which now has virtually none, may allow us to react to changing circumstances with far greater timeliness.

A second lesson from the 1986 law concerns the need to evaluate and rethink our willingness and capacity to enforce employer sanctions. Labor markets are loosely regulated, and the workforce is extremely diverse. A Northeastern University Center for Labor Market Studies report estimates that half of all new workers in the United States in the 1990s were foreign-born. Under these circumstances, can the government do any better than Europe has done with employer sanctions, even with significant budgetary increases? Is it possible to do so without the racial and ethnic discrimination that is, and must always remain, of con-

cern to Americans? Finally, can the government enforce sanctions, when Democratic and Republican congresses and administrations have been unwilling to establish the personal documentation requirements that might give employer sanctions a chance?

## Lesson #2: Legalization should not be done halfway.

### History

IRCA's approach viewed legalization as an amnesty — that is, an act of mercy and forgiveness — which many Americans fundamentally oppose. Consequently, the IRCA legalization debate was about how generous to be in pardoning lawbreakers. The current debate is on a similar path.

IRCA provided the opportunity to legalize to those who could demonstrate they had been in the United States “continuously” since before January 1, 1982. The authors believed that the political marketplace could bear no more. There was little debate about those who would not qualify for legalization.

When President Ronald Reagan signed IRCA in November 1986, the previous five years' population of illegal arrivals did not qualify. Yet they had little incentive to leave and the government had no plan whatsoever for dealing with them. In fact, employers who continued to employ illegally resident workers that they had hired before IRCA came into effect were exempt from sanctions. (The workers, however, were subject to deportation). IRCA created several additional exceptions that protected employers of casual and self-employed workers from legal responsibility. While such provisions reflected the political realities of the time, the message about enforcement was, and has continued to be, one of ambivalence. As a result, some three million unauthorized immigrants became ever more rooted in com-

munities, continuing to do essential work but in an unprotected legal environment. And they continued to reunify their families legally or illegally, build new families, and have children with American citizenship — becoming economically integrated and constructing full lives in a country in which they were not authorized to live. The consequences of past public policy have been that the roots for the growth of today's unauthorized population were left in place.

### Reflections

Some observers have concluded that the answer is tough legislation that closes all loopholes. The more likely path to success, however, is a combination of careful drafting and pragmatism that attempts to learn from prior experience. Unfortunately, activists on both sides of this issue have already reduced the president's proposals to a fight over the possibility of another amnesty. For reform legislation to succeed, it must avoid setting arbitrary standards for legalization simply because amnesty is such a politically loaded word.

*Regularization of status should be approached not as an amnesty program, but as an opportunity to address what has become a social, labor, and human rights issue of the first order; an issue of economic well-being and national security.*

## Lesson #3: Reducing incentives for fraud should be a top policy goal.

### History

IRCA's cut-off date for eligibility for legalization required applicants to prove that they had been in the United States continuously since before 1982. The date was set largely to exclude those attracted to the country by the protracted and well-publicized congressional debate over amnesty. However, the date gave rise to a thriving document fraud industry, as the unauthorized tried to document their eligi-



bility with proof (including affidavits) from and about their prior lives.

Intense post-legislation skirmishes over the implementation of the law, many involving legislators on either side of the issue, reinforced uncertainty that probably helped contribute to administrative inconsistency in certain areas, as well as further fraud. Although the process of writing regulations was remarkably open and participatory, the government held to strict interpretations of the statutory language on some key issues that led to several celebrated lawsuits over eligibility; one was not resolved until early 2004. The government lost all such suits.

### Reflections

The 1986 experience with fraud, post-enactment congressional interventions, and administrative inconsistency demonstrate the need for an approach to legalization that is flexible, transparent, and unambiguous. In particular, the Congress must be more disciplined as to how it conducts its post-enactment oversight responsibilities. Congressional micromanagement of immigration has reached epidemic proportions with little to show in terms of better policy outcomes. President Bush and the two Senate bills introduced so far in 2005 set the cut-off date for eligibility in the recent past. This cut-off date would be a repeat of past mistakes if Congress does not act soon.

Regularization of status should be approached not as an amnesty program, but as an opportunity to address what has become a social, labor, and human rights issue of the first order; an issue of economic well-being and national security. People should not be asked to prove when they arrived (about two-thirds of illegally resident persons probably enter the country without inspection) or for how long they have worked (many unauthorized immigrants are

likely to work off the books). These screening methods are so vulnerable to fraud that they risk appearing to reward illegal immigration. Instead, unauthorized immigrants should be asked to *earn* their new legal status.

Unauthorized immigrants should be asked to begin the regularization process by registering with immigration officials; they should then be given three or more years in which to qualify as legal permanent residents (LPRs). This lays the groundwork for one of the paramount objectives of the program, a security vetting. The criteria for regularization should be clear, and easily verifiable. Above all, they should reflect that which our society considers important and has the right to demand of its immigrants, thus strengthening national cohesion. Demonstrating the ability to be self-supporting, be steadily employed, have a clean criminal record, pay taxes, speak English capably, and show a measurable commitment to civic life, can reasonably be required of applicants.

The process should also pay for itself, but in ways that go beyond the adjudication costs alone. Applicants should be asked to help underwrite the additional social expenditures their new status will entail — costs that are currently borne by state and local jurisdictions alone. One way of paying for such costs is to require applicants to contribute to a *trust fund* that would reimburse state and local governments for such expenses in the early years — a privately-funded effort modeled on the federally-funded State Legalization Impact Assistance Grants that followed the 1986 legalization programs.

The three, or more, year period for transitioning to “green card” status and the likelihood of higher earnings due to the interim legal status make requiring a larger fee reasonable. Sliding fee scales would also make such fees a



fair price for the public goods the legalized receive. Together, fee structures along these lines reassure the American people that the program is tough but fair. This is essential for the public buy-in that can make the difference between enacting broad legalization or not. It would also be an invitation for private philanthropy to participate.

#### **Lesson #4: Speak unilaterally, if necessary, but think and act bilaterally and multilaterally.**

##### **History**

IRCA was conceived of as a purely domestic initiative, with little consideration on either side of the border as to what Mexico and other countries in the region could bring to the table. The debate was thus exclusively about our “sovereign right” to choose immigrants and our “duty” to control our borders.

These are indeed a nation’s prerogatives and responsibilities. Much has changed, however, since the early 1980s. The facts have demonstrated that a phenomenon as complex as migration cannot be well-managed unilaterally. It requires cooperation among neighbors. As Phil Gramm, a former Republican senator from Texas, observed in 2001, when it comes to unauthorized migration, too many sectors of American society, including “government at all levels,” are already deeply “implicated.” Pragmatism, even humility, is no weakness if the focus is on the right goal. This precept is being reinforced every day in the war on terror and is referred to explicitly in the president’s 2004 Budget Statement regarding the Department of Homeland Security.

Furthermore, the North American Free Trade Agreement (NAFTA) has created a framework for cooperation on immigration and opportunities for joint action that Congress, most ana-

lysts, and key stakeholders on this issue did not have in their field of vision as they developed and debated the IRCA legislation. Nor were Mexico’s (or many Mexicans’) public comments at the time particularly helpful or cooperation-inspiring. As a result, reaching out to Mexico (or Canada and other countries) was not a realistic option and few actors gave it serious consideration.

##### **Reflections**

Today, eleven years after NAFTA and nearly four years after the September 11 attacks, there is far greater appreciation of the fact that homeland security does not start at the nation’s borders. Border controls are in fact more effective the further away they begin from our physical borders, while the fight against human and other kinds of trafficking stands a much better chance at success when undertaken in cooperation with like-minded countries. Partnerships with Mexico and Canada can thus be important assets in our homeland security arsenal.

In this perspective, one of NAFTA’s principal contributions has been creating deeper and broader bilateral relationships between the United States and Mexico, as well as the United States and Canada, on matters that go well beyond trade. This has set the stage for far greater cooperation on security, migration, and other difficult issues. Whether these relationships produce what is needed in terms of domestic security and migration management is almost a direct function of how much effort we are willing to invest and how we invest it.

Working with the Mexican government in the political context created by NAFTA can pay valuable security dividends for the United States. It can, for example, lead to agreements whereby Mexico takes an ever more

active role in disrupting smuggling networks and in controlling access to its territory, thwarting those seeking to use Mexico as a transit or staging area for the illegal transport of people or goods into the United States.

Dismantling these networks and disrupting illegal entry and passage routes is not just a United States priority. The Mexican govern-

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ment has made some progress in these domains but receives little public credit in the United States, while paying a sig-

nificant political price at home. The Mexican government has a sophisticated appreciation of the fact that, by undermining the rule of law and undercutting the government’s credibility, smuggling syndicates and criminal networks make Mexico’s own governance aims more difficult. Furthermore, Mexico’s limited policing resources will be less over-extended if fewer people attempt to use Mexico as a transit country into the United States. The coincidence of policy interests is an opportunity that Mexican leaders seem to appreciate more than their American counterparts do, especially many of those in the US Congress.

## SOME IMMIGRATION REFORM ALTERNATIVES

President Bush is right in seeking to replace the status quo with a stable new immigration environment that builds a platform for new rules and rewards abiding by them. To be successful, however, the initiative must incorporate a more sophisticated understanding of the nature of immigration and be more ambitious in its objectives than the president’s plan appears to be. Both 2005 Senate bills

try to seed the policy territory the president has left fallow.

Advocates on both sides of the immigration issue have expressed skepticism and outright opposition to the president’s plan. Some of their views are more carefully considered than others. There is merit in far more positions on this issue than advocates on either side have been willing to acknowledge to date. Still, electoral politics explains much of the jockeying between congressional Democrats and President Bush’s (and some other Republicans’) proposals on this issue. Other voices simply intend to inflame, and they are succeeding.

In this policy brief, two of several alternatives proposed by important political actors are considered, so as to build the case for *comprehensive* immigration reform. The first is most frequently cited by the naysayers and the extremists within the president’s own party. The very simplicity of this alternative also makes it appealing to broad swaths of the American public. The second is associated with the more timid response that serves as the path of least resistance to many tough policy and political issues.

### Alternative One: Enforce the law and remove unauthorized immigrants

Anti-immigration activists insist that the law must be enforced and that the president’s plan — and the McCain, Kennedy, *et al.* immigration reform proposal — would simply reward lawbreakers and line-jumpers. Removing as many unauthorized immigrants as possible will, they argue, change the direction of the momentum away from more illegal entries and stays; attrition will do the rest. This logic is

deeply flawed in its understanding of the reality of immigration to the United States and makes erroneous assumptions about a number of important issues. Consider, for instance, our capacity to enforce laws that, on the continuum of critical national priorities, rank well below those of national and domestic security, public safety, or education — although they may be more or less implicated in most of these policy domains. Still, an analysis that has a comprehensive understanding of national priorities and limitations cannot possibly start and finish with “enforce the law.”

However, even if enforcing immigration laws received far greater budgetary and political commitments than it does now, there is little in the experiences of the United States or other countries that supports the idea that unauthorized immigrants will simply leave or that new ones will not arrive. Compared to the United States, the European Union (EU) is a political space with proportionately much larger, more centrally coordinated, and better resourced police and other law enforcement agencies. In addition, virtually all EU member states have national identification cards (and in several instances even population registers), regularly demonstrate a strong commitment to labor market and other forms of regulation, and have in some ways a less complicated set of attitudes about immigration than our own. Yet illegal immigration in Europe is growing at rates comparable to our own and the underground economy is growing even faster.

As a practical matter, it is unrealistic to imagine removing a significant share of 10 million people upon whom whole labor markets depend and whose families are often a mixture of citizen, lawful permanent residents, and illegally resident members. Even by doubling or tripling current removal rates, it would take decades, assuming no new for-

ign-born arrive or stay illegally, and the costs would be prohibitive.

## Alternative Two: Pursue incremental reform

A recurring question has been how much reform is reasonable to take on at one time. At first glance, the argument for moving slowly seems compelling. The issues are controversial and the technical details of reform difficult. The two bills introduced this year include some imaginative provisions. Yet, there is little evidence that enough hard choices have been made to meet the tests of smart reform.

McCain/Kennedy focuses more on the humanitarian challenge at the border and the broader labor market disorder that large-scale unauthorized immigration breeds. And it is better in acknowledging the social and economic facts on the ground. Cornyn/Kyl focuses more on the economics of the issue and tries explicitly to address the enforcement issues comprehensive reform must confront.

Do the challenges to reform mean, then, that there is nothing that can be achieved in the 109<sup>th</sup> Congress? Put differently, are there any “baby steps” that can create a path to more comprehensive reform?

**a. AgJobs.** One carefully negotiated piece of bipartisan legislation has been pending before the Congress: the Agricultural Job Opportunity, Benefits, and Security Act, or AgJobs. AgJobs would legalize and stabilize the agricultural workforce in perishable crops — a workforce that is almost entirely Latino and three-quarters or more unauthorized — while providing better protections to all of that sector’s workers. It would pursue the first set of its goals by allowing unauthorized workers

to work legally and begin to earn lawful permanent residence if they have worked in perishable crop fields for 100 days in 12 consecutive months during the 18 months prior to the legislation's enactment (thus targeting the more experienced workers).

These newly legal temporary workers would be able to remain in the United States for up to three years and take any job. However, they would have to perform a minimum of 360 days of agricultural work in the subsequent six years (and required minimums in the first three of these six years) before they could obtain lawful permanent residence. New foreign workers would also be able to gain legal access to this economic sector with fewer procedural requirements than today. In return, work-related benefits, legal protections, and labor standards throughout the sector (such as wages, housing/housing allowances, collective bargaining rights, and, most notably from a worker protection perspective, a federal private right to action and the ability of third parties to bring complaints to the US Department of Labor) would also be enhanced, in many instances dramatically so.

AgJobs would end American agriculture's long exceptionalism with regard to immigration rules, and is a substantial improvement over the status quo. It thus meets most criteria with which reform legislation on immigration must come to terms. In addition, its single-sector focus tackles one of the toughest political issues on which comprehensive immigration reform efforts have always stumbled, thereby removing it from the fray.

#### ***b. Targeting Adjudication Backlogs.***

There is another intermediary step that could ameliorate the illegal immigration challenge: clearing the adjudication backlogs in immigration benefits. For years, the government

has been falling further and further behind in adjudicating immigration benefit applications. Benefit waiting times have been on a steep rise since the mid-1990s, but have become even more acute in the last few years.

Part of the reason for growing backlogs is legitimate. The delivery of immigration benefits must be accurate, security considerations must be satisfied, and the service must be professional and courteous. But immigration benefits must also be delivered in a timely fashion. The cost is not just longer waiting lines and the likely swelling in the unauthorized population. The larger cost lies in disrespect for the rules — a phenomenon that has a deeply corrosive effect on the rule of law. That effect is not unlike that which offends so many law-abiding Americans when they see unauthorized immigrants come and/or stay in the country illegally.

Department of Homeland Security data make clear that, until the early 1990s, pending applications were holding fairly steady both in absolute numbers (in the low hundreds of thousands) and relative to completion rates. So were the numbers of received and completed applications. Demand began to grow as those who received lawful permanent status under the IRCA of 1986 became eligible for benefits, primarily as petitioners for their immediate family members. Yet, for a period, the immigration service was more or less able to keep up with most of the additional demand.

Things started to fall behind, however, by the mid-1990s, when the IRCA-fueled demand for adjudications was combined with a surge in naturalization petitions. This surge resulted from what some analysts have characterized as that period's "assault on immigrants." That "assault" culminated in three pieces of legislation in 1996: the Anti-Terrorism and

Effective Death Penalty Act, the Personal Responsibility and Work Opportunity Reconciliation Act, and the Illegal Immigration Reform and Immigrant Responsibility Act. Lawful permanent residents rushed to naturalize as a way of protecting themselves from the effects these bills had on the rights of non-citizens.

The surge in demand, however, is not the only variable that accounts for what happened to adjudications after 1996. The naturalization process was reengineered after the political crisis surrounding the Clinton administration's efforts to promote naturalization in 1995 and 1996. This created a sharp drop in completions that lasted until 1998. Following this reengineering, completion rates steadily increased again until the end of the fiscal year 2002, when, in the painstaking review of all immigration procedures that the September 11 attacks made necessary, they dropped precipitously once more. There have been few signs of recovery from this drop.

Delays entice some applicants, whose cases have been pending before immigration authorities for a long time, to come and stay in the United States illegally. Moreover, protracted delays in naturalization lead many immediate families of would-be citizens simply to reunify on their own. In both instances, these acts also implicate the United States petitioners — citizens, lawful residents, and employers — in an avoidable pattern of deception and illegality.

## The Requirements of Comprehensive Reform

The essential elements of comprehensive immigration reform that can get us beyond the present policy and political quandary are as follows:

- Encouraging the largest possible number of unauthorized immigrants to present themselves to the authorities so as to vet them against security screens (in return for an initially temporary legal status);
- Creating opportunities for those who are here illegally to earn permanent legal status by demonstrating their willingness and ability to meet tough but fair standards of evidence and conduct;
- Channeling illegal migration into legal and safe routes and restoring the rule of law;
- Reunifying close family members in a timely manner;
- Meeting employer needs — and critical national economic growth and competitiveness goals — in a timely manner without sacrificing worker protections; and
- Restoring faith in our immigration system and its managers.

Whichever immigration reform legislation is ultimately enacted will define how the United States responds to the issue for the next decade or two, triggering chain reactions that will exaggerate both successes and failures. Therefore, legislation must come much closer than past reforms to being a reform for all seasons, in economic, social, and political terms. It can approach that goal only by acknowledging the facts on the ground and making a real effort to reflect and anticipate realities in our labor markets, our families, and the world in which we live.

First and foremost, reformers must confront two elements of political realism head on. No immigration bill can become law without deep bipartisan support. Doing relatively small things on immigration will require almost as much of an investment of political capital as going for the big prize. (AgJobs, because it was crafted over five years of bipartisan nego-

tiations and because it has the blessing of key constituencies on both sides of the issue, is the exception to this rule). These “laws” of immigration law-making reflect both the nature of the issue and how broken the system is now.

The requirements of real reform demand political courage. Immigration reform that is comprehensive, thoughtful, and smart must:

- Recapture the initiative on immigration from organized smuggling networks and their clients, whether employers or families. Presently, much of our immigration policy is in the hands of criminals and profiteers. This makes a mockery of an activity that defines who we are as a country — and who we will become — more than anything else we do.
- Insist on the rule of law in immigration by seeking to regulate, rather than deny, critical facts on the ground. Laws that reflect reality and lead to predictable outcomes on a timely basis will allow us to make better-informed decisions about immigration and build a broader national consensus on the issue.
- Reflect unambiguously our values as a people by choosing legality over illegality, safety over unnecessary danger, and orderliness over chaos. These values, as the president has said repeatedly, do not stop at our borders.
- Advance our long-term economic interests while remaining demonstrably consistent with our short and medium-term ones. A stronger national consensus on immigration is possible only if we can demonstrate its broad economic benefits every step of the way.
- Anticipate the social consequences of economically motivated immigration decisions

and address them, both in regard to the unity and formation of families and in regard to essential labor standards and protections. No society can ignore the effects of immigration policy on its national fabric or labor market. This makes the host of issues included in the concept of immigrant integration a critical area for innovative public/private thinking and action.

- Meet our domestic and international legal obligations and allow us to act as good global citizens. It must also respect national budget constraints. However, cost cannot be an excuse for implementing only the politically appealing policing and control initiatives, without investing in immigration benefit adjudications and the social and economic integration of immigrants.

Meeting these requirements will be difficult. Nor can the effort be left only to the government. Rather, it must be approached in the spirit of a national project in which all of America’s voices, but particularly those of civil society and social institutions, are actively called upon to participate as full partners in a common effort toward comprehensive immigration reform. In this regard, the legalization effort of the late 1980s may be a good starting point for the level and forms of engagement that will be required of civil society.

Engaging civil society as full partners is the very essence of pragmatism. These institutions, and the spirit of engagement and volunteerism that they seed and rely on, will eventually determine whether or not reform proposals passed by Congress will have a fair chance to succeed. This holds true regardless of whether we are talking about a new law enforcement regime, a regularization program that elicits as close to 100 percent participation of the eligible population as possible, or a temporary

worker program that meets our labor market needs while protecting all workers.

## The Three “E”s of Stable Reform

The temporary worker visas that President Bush has repeatedly proposed are necessary migration management tools, but they are not nearly a big enough idea on which to anchor a lasting immigration reform plan. Such reform requires coordinated action in three interdependent policy areas:

- 1) Preventing future unauthorized immigration to the fullest extent possible through realistic policies and smart enforcement;
- 2) Providing adequate legal means for needed immigrants to enter the United States by expanding the number of visas of all types — permanent and temporary, for families and for workers; and
- 3) Accounting for and offering the opportunity to the currently illegally resident immigrant population to earn green cards.

These three policy goals are indivisible if the policy aim is stability, rather than simply another bite at reform. A fully integrated approach can be seen as a different “three-legged stool” than in 1986, this time without being wobbly because its legs are uneven or likely to topple because a leg is removed. Each of the three “E”s of comprehensive reform — enforcing the immigration laws effectively, expanding visas, and earning legal permanent status, is discussed below.

### **1. Enforcement: Stable reform requires devising smarter border and interior controls that are consistent with America’s values, temperament, and philosophy of government powers.**

The nation’s border and port-of-entry immigration enforcement is well on its way to

receiving the level of resources and attention that it deserves. There are two areas, however, where more attention and political investment can become true force multipliers in protecting our domestic interests. The first is developing ever more active cooperation with Canada and Mexico. The second requires a larger immigration management framework that relieves some of the pressure on border enforcement (and boosts our domestic security) in part by undercutting the human smuggling syndicates that profit from the chaos of the immigration system.

*Expanded pathways for legal migration and comprehensive regularization are not a substitute for meaningful regulation or smart enforcement.*

In this regard, the various proposals’ emphasis on temporary work visas can be helpful in at least two ways: (a) by giving current and prospective foreign workers and their employers a legal entry option; and (b) by jump-starting the circular (back-and-forth) movement of workers from the region, which has been lost due to border control policies leading to the perverse effect of “locking people in” once they successfully cross into the United States rather than keeping them out.

Temporary work visas would be a substantial improvement over the status quo in three critical social and human rights areas: (a) reducing border deaths by making crossings legal; (b) allowing the unification of the now-legal workers with their families; and (c) curbing some of the worst workplace and other abuses that are byproducts of illegal migration.

There is one policy arena, however, in which we must also make immense progress — the magnet of jobs. This may well be the toughest component of reform. Rethinking interior controls would require nothing less than a zero-based policy review, especially in regards



to labor market controls. The United States has never found anything even approaching equilibrium for sustained periods of time on this issue — whether in the area of managing and allocating resources, preventing discrimination, protecting civil rights, placing undue burdens on employers, or enforcing the law.

Interior enforcement must go beyond the job market. We also need a new, credible strategy for broader and more systematic enforcement of immigration laws. In that quest, expanded

*For many unauthorized immigrants, anything short of a real opportunity to obtain lawful permanent residence is not likely to prove enough of an incentive to either register or play by the rules, especially when it comes time to leave the country.*

pathways for legal migration and comprehensive regularization focused squarely on national interests are essential elements in the struggle to make enforcement of immigration law

more likely to succeed. But they are not a substitute for meaningful regulation or smart enforcement.

## **2. Expanded Numbers of Visas: Stable reform requires addressing the continuing demand for visas, especially from citizens of the countries on our borders.**

Visas for workers in our low-wage, low-value added economic sectors (mostly but not exclusively in service industries) should lead the way in an expanded visa environment. Some of those visas will be temporary; they should, however, have a tough but fair and clear path to permanency. Imaginative financial incentives for return are an excellent idea, but will not work in many cases. Some workers will still want to stay and some employers will still want to keep their most reliable employees. Both should have a legal means for doing so.

Other work visas should be permanent at the outset. These judgments may be politically complicated, and our data systems will prove grossly inadequate if certainty about projecting demand becomes the regulatory standard. Basic rules can be devised, however, that can make these judgments less politically volatile.

While many more work visas will be needed, they are but one of the areas that require legislative attention. Family reunification visas must also be increased and, at least for a while, they must be thought of as equal in priority to work visas. The United States must begin to do more to honor the principle of family unity. Reducing the benefit adjudications backlog will also go a long way toward fulfilling that principle. Since most of the cost of adjudications is financed by application fees, budgetary considerations should not be a major obstacle. Increasing and re-allocating family visas may prove a political quagmire, but it is an issue that must be engaged. Keeping immediate families together or reuniting them quickly must become a policy priority above all others, for reasons that are as much about morality as they are about smart migration management.

## **3. Earned Regularization: Stable reform requires offering a realistic and fair opportunity to the unauthorized resident population in the United States to earn lawful permanent status.**

A registration process — in effect, a census of the unauthorized — is a necessary first step if the government is to know better who is already in the United States. This is a critical element of domestic security thinking after September 11 and has topped both President Bush's and the recent bills' rationales for immigration reform. Such knowledge will give the Department of Homeland Security the

flexibility to deploy limited resources more effectively. But, for that strategy to succeed, as close to 100 percent of unauthorized immigrants as possible must participate in the registration program. After all, the best way to find the proverbial needle in the haystack is to make the haystack significantly smaller.

This is where less than comprehensive reform ideas become shortsighted. A program that leads only to temporary work visas is likely to fail, at least partly, in both of its key objectives: getting the overwhelming majority of people to participate at the outset, and moving people out of the US at the end of the plan's time frame. That is because many of today's illegally resident immigrants have already spent years in our country, are married to legal residents, are parents of citizen children, and work in jobs that are permanent in every sense of the word.

For many of these people, anything short of a real opportunity to obtain lawful permanent residence is not likely to prove enough of an incentive to either register or play by the rules, especially when it comes time to leave the country. Most long-term residents who receive only temporary legal status would likely drop back out of status after the plan's end, rather than return to a place that has not been their home for more than a decade. And that assumes they will choose to go through the security registration in the first place.

## CONCLUSION

If comprehensive immigration reform becomes reality, the shared reward of smarter, fairer, safer, more orderly, and more productive legal migration would certainly show ordinary Americans and foreigners alike that it is possible to have an immigration system that is based on reasonable rules and benefits the country as a whole. More will also be needed to be done to support immigrant integration and perceptions of immigrants as both economic and community assets.

The national conversation about immigration reform has begun. There is still time to craft legislation that is courageous and disciplined enough to resist both narrow special interests and the extremists in the president's own party, while building the bipartisan immigration reform coalition that can make real reform happen. And real reform must be comprehensive reform that follows an integrated approach in addressing the issue of those illegally resident immigrants who are already here; makes family unity possible; anticipates the future demand for more work visas; develops credible enforcement policies that are consistent with our traditions; and targets behavior that the country finds unacceptable. Reform must be thoughtful enough not to repeat the mistakes of the past. Finally, bold reforms must create a stable policy platform that can reap the benefits of full engagement with the global migration system.

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## Additional Task Force Publications

### **Independent Task Force on Immigration and America's Future: The Roadmap**

By Michael Fix, Doris Meissner, and Demetrios G. Papademetriou

### **Unauthorized Migrants: Numbers and Characteristics**

By Jeffrey S. Passel, Pew Hispanic Center

### **Twilight Statuses: A Closer Examination of the Unauthorized Population**

By David A. Martin, Migration Policy Institute and the University of Virginia

### **Lessons from the Immigration Reform and Control Act of 1986**

By Kevin O'Neil and Betsy Cooper

### **Legalization: A Comparative Perspective**

By Demetrios G. Papademetriou

## Additional MPI Resource

### **Migration Information Source Special Issue on the Unauthorized**

This Special Issue of MPI's online resource for reliable data and timely analysis examines employer sanctions; characteristics of unauthorized immigrant families and workers; removals; and legalization programs.

It is available at:

[www.migrationinformation/special\\_unauthorized.cfm](http://www.migrationinformation/special_unauthorized.cfm)

## About the Author



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Demetrios G. Papademetriou is the President of the Migration Policy Institute (MPI), a Washington-based think tank dedicated exclusively to the study of international migration. He is also the convener of the Athens Migration Policy Initiative (AMPI), a task force of mostly European senior immigration experts that advises EU member states on immigration and asylum issues, and the Co-Founder and International Chair *Emeritus* of "Metropolis: An International Forum for Research and Policy on Migration and Cities." Mr. Papademetriou holds a Ph.D. in Comparative Public Policy and International Relations (1976) and has taught at the universities of Maryland, Duke, American, and New School for Social Research. He has held a wide range of senior positions that include: Chair of the Migration Committee of the Paris-based Organization for Economic Cooperation and Development (OECD); Director for Immigration Policy and Research at the U.S. Department of Labor and Chair of the Secretary of Labor's Immigration Policy Task Force; and Executive Editor of the *International Migration Review*. Mr. Papademetriou has published nearly 200 books, articles, monographs and research reports on migration topics and advises senior government and political party officials in more than twenty countries. His most recent books include *NAFTA's Promise and Reality* (2003, co-author), *America's Challenge: Domestic Security, Civil Liberties, and National Unity after September 11* (2003, co-author), and *Caught in the Middle: Border Communities in an Era of Globalization* (2001, senior editor and co-author).

The Migration Policy Institute (MPI) is an independent, non-partisan, non-profit think tank dedicated to the study of the movement of people worldwide. The institute provides analysis, development, and evaluation of migration and refugee policies at the local, national, and international levels. It aims to meet the rising demand for pragmatic responses to the challenges and opportunities that migration presents in an ever more integrated world. MPI produces the Migration Information Source website, at [www.migrationinformation.org](http://www.migrationinformation.org).

This report was commissioned as part of MPI's Independent Task Force on Immigration and America's Future. The task force is a bipartisan panel of prominent leaders from key sectors concerned with immigration, which aims to generate sound information and workable policy ideas.

The task force's work focuses on four major policy challenges:

- The growing unauthorized immigrant population
- Immigration enforcement and security requirements
- Labor markets and the legal immigration system
- Integrating immigrants into American society

The panel's series of reports and policy briefs will lead to a comprehensive set of recommendations in 2006.

Former Senator Spencer Abraham (R-MI) and former Congressman Lee Hamilton (D-IN) serve as co-chairs, and the task force's work is directed by MPI Senior Fellow Doris Meissner, the former Commissioner of the Immigration and Naturalization Service.

The approximately 25 task force members include high-ranking members of Congress who are involved in shaping legislation; leaders from key business, labor and immigrant groups; and public policy and immigration experts. MPI, a nonpartisan think tank dedicated to the analysis of the movement of people worldwide, is partnering with Manhattan Institute and the Woodrow Wilson International Center for Scholars for this project.

For more information on the Independent Task Force on Immigration and America's Future, please visit:

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