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REAL IMMIGRATION REFORM: THE PATH TO CREDIBILITY

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For over 40 years, efforts have been made to respond to the unexpected consequences of the accidental revival of mass immigration that has followed the passage of the Immigration Act of 1965. Immigrants had been declining as a percentage of the population since 1914 and in absolute numbers since 1930. In 1965 only 4.4 percent of the population was foreign born and they totaled only 8.5 million people. There was absolutely no intention by policy makers of that era to increase the level of immigration. The post-World War II “baby boom” began pouring a tidal wave of new labor force entrants in the labor market that year and would continue to do so for the next 16 years. Moreover, the “War on Poverty” had been launched in 1964 and the Civil Rights Act of 1964 was passed. Both emphasized the need to focus on the employment needs of unskilled, poor and minority workers. Also, the infamous “bracero program” that had allowed the entry of temporary foreign workers from Mexico to do farm work had finally been terminated on December 31, 1964 because it had taken the agricultural labor market out of competition with the non-agricultural labor market.

Rather, the stated goal of the Immigration Act of 1965 was to rid the immigration system of the overtly discriminatory “national origins” admissions system that had been in effect since 1924. But as events were to reveal, this legislation let the “Genie out of the jug.” Without any warning to the people of the nation, the societal changing force of mass immigration was once again released on an unsuspecting public. By 2005, the foreign-born population had soared to 35.5 million persons (12.5 percent of the population) and there were over 22 million foreign born workers in the labor force (14.7 percent of the labor force).

The obvious conclusion from this continuing saga is that, when it comes to immigration reform, legislative changes should only be taken with the greatest of caution. While there is common agreement today that the existing immigration system needs changes, the reform responses should not be seen as an opportunity to placate the opportunistic pleadings of special interests groups. They should serve the national interest.

Immigration is a policy-driven issue. Policy changes do make a difference. Nearly any change has labor market implications—some large and some small. As America’s most influential labor leader, Samuel Gompers, wrote in his autobiography: “Immigration is, in all its fundamental aspects, a labor issue.” For no matter how immigrants are admitted or

by what means they enter the United States, most adult immigrants join the labor force following their entry as eventually do their spouses and children. Thus, the labor market impact of immigration policy changes must be a guiding consideration when legislative decisions are made.

The Major Reform Issues

At a time when the labor market of the nation is undergoing significant transformation in terms of its skill and educational requirements, there is a distinct difference between the human capital endowments (as indicated by educational attainment levels) of the adult native-born population and those of the native foreign-born population. Fully 33 percent of the foreign-born population has not completed high school and another 25 percent only have a high school diploma (compared, respectively to 13 percent and 34 percent of the native-born population). The foreign-born work force, therefore, is disproportionately concentrated in the low skilled segment of the nation's labor supply. As a consequence, their substantial presence has been repeatedly found by research to lower the wages of all low skilled workers. Likewise, as the Council of Economic Advisers during the Clinton Administration, found the increase in "the relative supply of less educated labor" caused by immigration has "contributed to increasing inequality of income" within the nation. Further, the unemployment rate for workers without a high school is reported by the U.S. Department of labor to be 6.8 percent in 2006 – with the rate for such black workers being 12.8 percent. Thus, there is ample evidence that prevailing immigration policy is not congruent with the labor market needs of the nation.

The second concern is the massive violation of the existing immigration system by illegal immigration. It makes little sense to debate the deficiencies and/or to consider additions to the extant system when mass violations of whatever is enacted go on year after year. The accumulated stock of illegal immigrants in 2006 is estimated to be close to 12 million persons, with the annual increase being 500,000 a year. Worse yet is the fact that these numbers exist despite the fact that another 6 million illegal immigrants have had their status legalized as the result of the 7 amnesties that have been granted by Congress since 1986. Thus, it is not much of a stretch to conclude that almost half to the total foreign-born population of the United States today is either presently an illegal immigrant or was one in the past. The estimated 7.4 million illegal immigrants are concentrated in the low skilled segment of the labor force where they compete with over 42 million legitimate workers (i.e., the native born, naturalized citizens, permanent resident aliens, and temporary visa holders eligible to work) who are also mostly employed in low skilled occupations. Because the illegal immigrant workers will do whatever it takes to get a job, they become "preferred workers" for these jobs. The losers are the legal workers whose wages and incomes are depressed or who become unemployed as well as the others who become discouraged from seeking work and withdraw from the labor force. These are the persons who are most adversely affected by the unfair competition with illegal immigrant workers and who are in need of the protection of the law. But their voices continued to be ignored.

Lastly, despite the lack evidence of any labor shortages, the expanding use of non-immigrant labor programs and calls for new “guest worker programs” have raised concerns that immigration policy is being by special interests as a method of cheap labor recruitment. The number of visas issued for employment based non-immigrant workers has doubled from about 600,000 visas in 1994 to approximately 1.2 visas in 2005. The controversial H1-B visas for “specialty occupations” have tripled since 1994 – from 98,030 visa to 321,336 visas in 2005.

Reform of the Legal Immigration System

The logical starting point for efforts to change the legal immigration system is the recommendations of the U.S. Commission on Immigration Reform (CIR) in 1997. The findings of CIR were the product of six years of careful study that was backed up numerous public hearings; consultations with experts; and commissioned research studies – including the work provided by a special panel created by the National Research Council of the National Academy of Science. Collectively, its report represents the best and most impartial study ever done of the nation’s immigration policies.

CIR concluded that the existing immigration system pays virtually no attention to the labor market in its design. For the most part, whatever human capital attributes most immigrants bring to the United States are largely incidental to the reasons for which they are admitted. Far too many bring far too little. Moreover the admission of one person can trigger the entry of additional extended family members who also typically have a paucity of human capital endowments as well.

To reduce this “chain migration” phenomenon, CIR proposed that the annual level of legal immigration be reduced (to 550,000 visas a year). To accomplish this, it recommended the deletion of most of the extended family admission categories that provide eligibility for additional family members after one person becomes a permanent resident alien or a naturalized citizen. CIR called for the categories that admit adult unmarried children of U.S. citizens; adult married children of permanent resident aliens; and the adult brothers and sisters of U.S. citizens all be eliminated. It also recommended that the diversity visa slots (50,000 visas) be eliminated. The diversity lottery program also pays scant attention to any human capital characteristics of those it admits (i.e., they only need to have a high school diploma).

In accordance with its belief that immigration policy should move away as much as possible from the admission of unskilled immigrants and toward skilled immigrants, CIR also recommended that no unskilled workers be admitted under the employment-based admission categories. It recognized that the nation had a surplus of unskilled job seekers (as it still does today) and certainly should not admit more. As the Chair of CIR, Barbara Jordan, explained:

“What the Commission is concerned about are the unskilled workers in our society. In an age in which unskilled workers have far too few opportunities opened to them, and which welfare reform will require thousands more to find jobs, The Commission

sees no justification to the continued entry of unskilled foreign workers—unless the rationale for their admission otherwise serves a significant interest, as does the admission of nuclear family members and refugees.”

Illegal Immigration Reforms

There is little reason to debate changes in the nation’s legal immigration system as long as its terms are regularly and massively violated by illegal immigration. The integrity of the entire system is in question and will remain tainted until its terms are strictly enforced. Three steps must be taken:

1. Employer sanctions – which were advertised as being the “centerpiece” of the strategies to combat illegal immigration when they were enacted in 1986 – must be made to work. A requirement to verify social security numbers (as recommended by CIR) must be made mandatory immediately while steps be initiated to establish a national counterfeit proof worker identification system are put into place. The card would not have to be carried with someone but only be produced at those times when one applied for a job or for some government benefit.
2. Enforcement must become a reality. Fines for violations of the employer sanctions system must be increased and used routinely. The same for criminal penalties for repeat offenders. By both deed and national publicity, the message must be made clear to the public that illegal immigrants will not work in the United States. Those apprehended will be fined too (if employed) and deported. More worksite inspectors and border patrol personnel hired and deployed and more detention facilities added.
3. There must be no amnesties given for those who have illegally entered the United States to work. There have been seven amnesties since 1986 when the first such amnesty was given. Another was even pending in the U.S. Senate on the infamous day of September 11, 2001 when terrorists attacked in New York City and Washington, DC. It was abandoned in the wake of those attacks because background checks as required of legal immigrants were never done for those who entered illegally.

Illegal immigrants inflict harm on the American workers. Getting them out of the labor force is as important as keeping others from illegally entering the country. Only then will market forces be free to set the wages and working conditions without being artificially depressed and worsened by the presence of the shadow labor force who are not supposed to be even in the country to say nothing about not being in the labor force. Given another amnesty – especially on the unprecedented scale of the millions now in the U.S—would free them to move into other occupations and other geographic regions of the country not now infected by the presence of illegal immigrant workers. Moreover, if amnesty is given again to any significant number of those illegal immigrants now in the country, the potential family reunification implications of what the immigration system will provide once the amnesty recipient gains permanent resident status

and later naturalized citizenship are mind-boggling (certainly in the tens of millions of similarly low skilled extended family members).

Local communities will be devastated by the increase in the demand for government services and local taxes will have to be greatly increased to meet their needs which now will have been legitimized.

Massive fraud can be expected to add tens of thousands of additional amnesty seekers who do not qualify for whatever the eligible terms are, but who will also seek to be included. Who can be expected to stop them from trying?

The anticipated result will be that the low wage labor market will simply be inundated by job seekers. A Marxian nightmare for low skilled workers will be created. Wages for low skilled workers will stagnate and increases will likely be tied largely to the irregularity of increases in the federal or state minimum wage rates. Income disparity will rapidly worsen. Competition for low skilled jobs will be brutal and poverty rates will soar.

Finally, it is absolutely inconceivable that the U.S. Department of Homeland Security could ever administer the terms of any of the proposed amnesty programs (e.g., verifying their ability to speak English, checking their knowledge of American civics, seeing if they have paid their back taxes, affirming that they have not committed any crimes, confirming that all eligible males have signed up for the military draft, etc.) in any thing close to a competent manner and still do all of its multiple other immigration-related duties. It would be cheaper by far to spend a small fraction of what it will cost to administer an amnesty program on tooling-up worksite enforcement of employer sanctions and border management.

There simply cannot be anymore amnesties for those who have continued to violate the nation's immigration laws that ban their eligibility to be employed.

Non-Immigrant Policy Reform

Both CIR in 1997 and the earlier findings of the Select Commission on Immigration and Refugee Policy in 1981 stated unequivocally that there should not be anymore guest worker programs for unskilled workers. Their views reflected those of virtually every scholar who has studied the issue both in the United States and elsewhere. Such programs have uniformly proven to be administratively difficult to enforce; hard to stop once enacted; depress wages for those employed in impacted occupations; stigmatize certain jobs as being only for foreigners; and inevitably generate more illegal immigration.

As for skilled workers, proposals to enlarge the existing H1-B program in "specialty occupations" are coming largely from special interest lobbying campaigns sponsored by corporate interests. There is no demonstrable evidence of any chronic shortage that the workings of the nation's own training and educational institutions cannot overcome.

Corporations simply do not want to compete for such workers from the pool of American workers. The basic question is: why should the federal government use public policy to keep the wages of American workers from being paid what the nation's labor market would otherwise dictate?

The existing H1-B program is fraught with charges of hiring and layoff abuses. These concerns are associated with whether or not the program is designed to keep starting level wages in these occupations below what they would otherwise be and, also, whether the program is used to discriminate against older workers in these occupations who, if retrained to keep current with evolving technologies, would command higher salaries. The H1-B programs also conjure up negative images of abuse associated with the concept of indentured servitude for those employed under its auspices. If the visa holder is intending to try to use the H1-B program (as many are) as a means to legally immigrate to the United States under the employment-based admission preference, he needs to work for an American employer long enough for his employer to certify that he is needed for that job and that a qualified American worker is not available to do the job he is now doing.

If in fact there is any likelihood that a skilled shortage were to occur, rising wages should signal American youth and American training and education institutions of the opportunities to respond. Why dampen the signal system of a free market with an H1-B program designed primarily to undermine this mechanism and to deny American workers the opportunities to fill these skilled worker positions? It is long past time to reign-in this massively abused program. There is absolutely no national interest in expanding it.

Concluding Observations

In its final report to Congress in 1997, the Commission on Immigration Reform defined what "a simple yardstick" for "a credible immigration policy" is: "people who should get in do get in, people who should not get in are kept out; and people who are judged deportable are required to leave."

The standard cannot be clearer. Congress and the Administration at that time did not listen and, sure enough, things have gotten far worse.

It time to put aside the selfish pleas of special interest groups and to enact real immigration reform.

Although some of my recommendations address issues not mentioned by CIR, all are consistent with those about which it did speak. All are intended to assure that our immigration policies are fair but firm and that they are congruent with the welfare of the nation's most valuable resource: its labor force.