

BORDER BRIEF

The Guest Worker Approach to U.S. Immigration Reform

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“It is time for an immigration policy that permits temporary guest workers to fill jobs Americans will not take, that rejects amnesty, that tells us who is entering and leaving our country, and that closes the border to drug dealers and terrorists” — President George W. Bush, State of the Union Address, February 2, 2005.

Overview

The promise of immigration reform has been a recurring and problematic theme for President George Bush’s administration, beginning in 2001 when key negotiations with Mexican President Vicente Fox were sidelined by the September 11 terror attacks. Four years later, the president has pledged to make guest worker legislation a top second-term priority amidst an emerging immigration policy crisis. This policy brief examines the role of current enforcement-oriented policies in creating that crisis, and considers the options available for strengthening enforcement and redirecting migrants into legal channels. I argue that a well-designed guest worker program represents the best real-world, near-term alternative for managing the supply of unskilled labor and regaining control of the U.S.-Mexican border. In the process, I address key questions about the appropriate design and scope of a new guest worker program, whether such a program would be “fair,” and whether it will serve as a magnet for new undocumented migration.

The Emerging Immigration Crisis

President Bush’s emphasis on migration reform reflects his belief that “the system is broken,” a point accepted by analysts on all sides of the immigration debate. First, given the current structure of U.S. labor markets, there is growing evidence of too little legal immigration of certain types. At the high end of the skills distribution, foreign enrollment in U.S. universities has plummeted since 9/11, including an 18% drop between 2003 and 2004; and U.S. firms report tens of billions of dollars of lost contracts associated with the inability to hire foreign workers or arrange visas for foreign buyers and suppliers. One source of high-skilled labor, the H-1B guest worker visa, met its 2005 quota of 65,000 visas on October 1, 2004—the first day of the fiscal year—and has been over-subscribed for six of the last eight years. At the low-end of the skills distribution, which includes most Mexican immigrants, demand for migrant labor also exceeds the legal supply. Indeed, low-wage and low-status service, construction, and maintenance jobs are among the fastest-growing sectors of the U.S. post-industrial economy; yet most native workers are over-educated and disinclined to accept these

jobs. Thus, Mexican immigrants were the first workers hired during the boom years after 1996, and their wages increased 20% between 1996 and 2000.

Second, the system is also “broken” in terms of its ability to control undocumented migration. Indeed, despite exponentially increasing enforcement since 1980, the undocumented population in the United States is now between 9 and 10 million people, more than twice the 1990 level. While immigrants generally benefit the United States in numerous ways—paying more in taxes than they consume in services, fueling economic growth without inflation, underwriting the social security system—*undocumented workers* diminish many of these gains.

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That is, because they are especially vulnerable to exploitation and the threat of deportation, undocumented workers are likely to accept below-market wages, with ripple effects that drive down wages for legal workers. Undocumented workers are also four times more likely than legal immigrants to be paid off the books, which limits their contribution to the U.S. tax base. Also, undocumented workers are less likely to pursue higher educational goals, purchase homes (or make other economic investments), to obtain preventative health care, and to fully integrate within U.S. civil society. Perhaps most important, current efforts to stem the inflow of undocumented workers overwhelmingly dominate U.S. border enforcement and prevent agents from focusing on the far more pressing national security goals of narcotics control and counter-terrorism.

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On one level, the failure to admit enough legal immigrants to meet the demands of a changing U.S. economy reflects an age-old problem for the United States and other wealthy states: the economic demand for labor consistently exceeds the social tolerance for new, poor immigrants (and immigrants in general). Indeed, current complaints about an invasion of unskilled, non-English speaking migrants taking over our cities

bears a striking resemblance to mid-19th century complaints about German migration and early 20th century complaints about Southern and Eastern Europeans. Yet on another level, the failure to control low-skilled undocumented migration is a function of flawed and unbalanced U.S. immigration policies. In particular, the current U.S. policy regime focuses overwhelmingly on unilateral enforcement designed to interrupt the supply of unwanted migrants.

The Current U.S. Policy Regime: Limiting the Supply of Migrants

Current U.S. policy allocates about 600,000 legal permanent resident (LPR) visas on the basis of migrants’ family relationships with U.S. residents, and about 140,000 on the basis of migrants’ employment characteristics, with the majority of these going to professionals with advanced degrees and other skilled immigrants. Dozens of different classes of temporary non-immigrant visas are also available, including about 100,000 in recent years for temporary employment of low-skilled immigrants. Yet these non-immigrant visas have not kept pace with growing demand for low-paid, low-

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status, and difficult work in industries like food processing, services, maintenance, agriculture, and construction—all industries increasingly shunned by native workers. As a result, hundreds of thousands of migrants continue to cross the U.S.-Mexican border illegally each year in pursuit of these jobs.

The overwhelming focus of the U.S. policy response is to stop this flow at the border. Since 1993, U.S. border enforcement has emphasized “prevention through deterrence” by placing thousands of well-equipped agents along the most heavily trafficked border regions in the hope of dissuading migrants trying to enter illegally. Border agents are reinforced by a series of fences and a network of motion detectors, infrared and night-vision cameras, and other high-tech equipment. At present, almost 11,000 agents patrol the U.S.-Mexican border, making it among the most heavily fortified in the world. Meanwhile, since the 1990s, border control efforts have been supplemented by a series of restrictions designed (in part) to deter migration by making life in the United States less attractive to migrants. In particular, a variety of state and federal policies have limited migrants’ access to welfare, Medicaid, and other public benefits. Legislation passed in 1996 and 2002 made it easier for authorities to detain and deport immigrants while limiting their due process rights.

This unilateral enforcement approach fails on three levels. First, the militarization of the U.S.-Mexican border has been enormously costly. Current U.S. funding (FY2004) on migration enforcement \$9.5 billion, up from \$1.9 billion in 1999 and just \$219 million in 1980. Second, while estimates vary, prevention through deterrence and denial of benefits appear to have been phenomenal failures: over the same time period of exponentially increasing enforcement spending, estimated undocumented inflows have climbed from 65,000 per year during the 1980s, to 320,000 per year during the early 1990s, to between 440,000 and 500,000 per year since 1996. Third, current policy has had a number of unintended negative consequences. Increased border enforcement has sparked a thriving criminal industry along the border. Smugglers (*coyotes*) earn as much as \$1,500 for guiding migrants across the border and organized crime rings combine people- and drug-smuggling efforts into one operation. Current policy has also led migrants to choose riskier routes; over 400 migrants now die each year at the border, up from fewer than ten per year during the 1980s. The focus on border enforcement is also an obstacle to North American integration, as average wait-times for Mexico-U.S. border crossing climbed to 90 minutes in 2002. Border fencing is also criticized due to its potentially negative environmental impacts. In short, for many diverse reasons, current migration policy is unacceptable.

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The current regime fails to reduce undocumented migration, and produces these additional negative outcomes, because it is unbalanced. Current policy focuses on deterring the supply of undocumented immigrants, while essentially doing nothing to reduce demand within the United States. Quite predictably,

artificial constraints on supply combined with persistently high demand causes black markets to emerge. Thus, one solution to these problems would be to combine additional supply-reduction efforts with real steps to reduce demand for undocumented migration. While such an approach could certainly succeed, the costs of interrupting supply and demand in this way would be unacceptably high. Thus, I will argue below that a third policy tool should receive greater attention: redirecting migrants into legal channels, including through guest worker programs and/or expanded LPR visa

admissions. Although previous guest worker programs have been deeply flawed, these earlier failures provide important lessons for successful future efforts.

Further Steps to Limit Supply and Demand

Three obvious complements to the current enforcement regime exist, though all are deeply problematic. First, in the long run the most effective strategy for reducing the supply of undocumented immigrants is simply to raise wages and improve working conditions in migrant-sending states to the point that fewer people choose to depart. For exactly this reason, the 1994 North American Free Trade Agreement (NAFTA) was actually touted as a migration-control measure. Yet the U.S.-Mexican wage gap has actually increased during the NAFTA years. Economic modernization has created sharp short-term disruptions in Mexico as subsistence farmers and other traditional producers have been uprooted from rural communities, a trend which has probably contributed to rising undocumented flows in the last decade. Thus, economic development in Mexico and other migrant sending countries may reduce migration pressures over the course of several decades, but this timeline does little to address the current crisis.

A second approach that shares a similar philosophy would be to reduce the demand for low-skilled immigrants by replacing them with native workers. This principle motivates the requirement that employers seek native workers prior to hiring guest workers. Yet the shift to a post-industrial economy means that the native-born children of blue-collar workers would be forced to accept jobs emptying bedpans, processing meat, and mopping floors. To affect this change would require a cultural shift in how such menial labor is valued (culturally and economically), and the reversal of a two-century trend of children taking “better” jobs than their parents. Wage increases to affect these changes would also create inflationary pressures.

Thus, the most realistic complement to current supply-reduction policies would be more effective employer sanctions. The 1986 Immigration Reform and Control Act (IRCA) made it illegal to hire undocumented immigrants, and provided for fines on employers of up to \$10,000 per illegal worker. Yet IRCA implementation has been a failure for both structural and policy reasons. First, as noted above, native workers are hesitant to accept certain jobs even as wages rise above market levels. Second, in a competitive market, individual employers have little incentive to be the first in the industry to raise wages to the point that migrants or native workers may replace undocumented migrants.

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These problems are exacerbated by flaws in IRCA implementation. Enforcement of employer sanctions requires a method for checking workers’ legal status, but civil libertarians and conservatives are united in their opposition to excessive government intrusion. Instead, IRCA allows workers to present a wide range of documents to prove their legal status; as a result, even good faith efforts by employers may be undermined by fraudulent documents. Partly for this reason, employers of undocumented migrants face relatively small fines, which many accept as a business expense. Meanwhile, only \$11 million (0.3%) of the \$3.7 billion Immigration and Customs Enforcement (ICE) budget is devoted to worksite inspection in 2005, and worksite inspection was formally abandoned altogether in 1999 (and only 13 employer fines were handed in 2003). By confronting

workers with a real threat of deportation but failing to punish employers, the current system gives the latter an important advantage in wage bargaining. In effect this transfers wealth from immigrants—and other low-skilled workers—to employers and consumers. Thus, while a more effective worksite enforcement program would not be logistically difficult—a pilot program for determining employment eligibility already exists, and higher fines combined with a real probability of inspection would deter many employers—there are major political obstacles.

A more fundamental problem to the supply-and-demand enforcement approach is that keeping migration below market levels is highly inefficient. Just as tariffs on trade reduce production and raise prices, so too do restrictions on labor flows. Similarly, rapid de-regulation of labor flows, like trade, creates winners and losers, and regulatory action is necessary to mitigate its effects, as discussed below. In an era of free trade, effective restrictions on labor flows would force employers in tradable sectors to outsource production, a trend already visible. And in non-tradable sectors employers will pass costs on to workers in the form of less hiring, lower wages (to compensate for riskier employment) and heavier use of labor contractors (with additional cuts in wages and benefits). Each of these patterns emerged after IRCA's passage despite its flaws.

Re-Directing Migrants into Legal Channels

Rather than interrupting supply and demand, a third policy tool for reducing undocumented migration involves redirecting existing flows from undocumented to legal channels. This is the principle that underlies labor-based legal permanent resident (LPR) visa quotas and guest worker programs. Increasing quotas for low-skilled workers within either category could ameliorate the problem of undocumented migration. Expanding LPR flows would have some important advantages, including the promotion of immigrant integration and obvious benefits for migrants themselves. Yet increasing LPR visa quotas by targeting low-skilled workers is a tough political sell. Thus, guest worker programs have received far more political attention, including from the Bush administration.

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However, the Bush administration has not yet addressed the key problems associated with guest worker programs: impacts on native wages, “overstay,” and employer accountability. The current H-1 and H-2 guest worker programs—like the 1942-64 Bracero Program—have been sharply criticized for undermining native wages and failing to hold employers accountable to contract obligations. Moreover, both U.S. and European guest workers have also famously failed to return home: either “leaking” out of their

temporary positions prior to the end of their contracts or “overstaying” visas at contract end. However, there are specific policy solutions to these problems.

First, a guest worker program must guarantee generous wages and benefits to minimize the negative impact on natives. (Employers and analysts argue that some jobs fail to attract natives even as wages rise above market levels; a guest worker program should test this theory by requiring above-market wages.) And guest worker visas should be defined on an industry-wide basis rather than tying

workers to a particular employer. In short, forcing migrants to choose between remaining in a bad job and giving up their legal status creates an irresistible (to employers) opportunity for exploitation. Conversely, where workers are educated about their contractual rights and empowered to demand them, guest worker programs should avoid the exploitative patterns associated with undocumented inflows, to the benefit of native labor.

Second, a new guest worker program should be structured as bilateral agreement between the United States and Mexico (or as a multilateral agreement including Canada and/or additional Caribbean Basin states). In exchange for more access to U.S. guest worker visas, migrant-sending states would be charged (in cooperation with U.S. officials) with screening and licensing guest worker applicants and with enforcement of guest worker contracts. In exchange for a new guest worker treaty—a huge political victory for Mexican policy-makers—the United States should also demand greater Mexican cooperation in U.S. counter-terrorism and counter-narcotics efforts at the border and within Mexico, and a substantially expanded Mexican role in discouraging undocumented emigration.

Third, the problems of guest worker leakage and contract overstays should be addressed by offering migrants meaningful incentives to remain within the program. If policy-makers consider it important that guest workers eventually return to their countries of origin, the United States should create guest worker savings account redeemable as an annuity once migrants return to their countries of origin. Mexico and other source states also benefit from the return of some immigrants, and could provide matching funds. Alternatively, guest workers contracts might be viewed as probationary status, in which case guest workers that maintain good employment records and meet other “performance goals” would eventually be granted LPR status. Migrants might be allowed to choose among these alternatives, with savings accounts reverting to the U.S. treasury when eligible migrants opt for LPR status.

These three policy dimensions—generous contracts, bilateral enforcement, and economic incentives to meet contractual obligations—would re-direct undocumented migrants into legal channels without undermining the positions of native workers, substantially raising labor costs for U.S. employers, or slowing U.S. economic growth. Moreover, in contrast to the enforcement-oriented approaches discussed above, establishing a bilateral guest worker program would strengthen U.S.-Mexican (or U.S.-regional) relations, rather than remaining a primary source of tension. Most important, a guest worker program of sufficient scope would eradicate the vast majority of undocumented Mexico-U.S. *labor* flows virtually over night, allowing authorities to focus on the real enforcement problems associated with narcotics and terrorism.

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Program Scope: Mexico, Caribbean Basin, or Global?

Should participation in a guest worker program be limited to Mexico, extended to the remainder of the Caribbean Basin, or developed on a universal level? Some argue that a narrow program should be rejected in support of the principle of non-discrimination. Yet while this principle is important at the level of LPR visa issuance, it is has never applied to non-immigrant visas: the United States

already grants citizens from 29 states easier access through the visa waiver program. Meanwhile, regionalism is a well-established and valid feature of today's global economy. EU countries extend migration and labor privileges to residents of other EU states, while excluding the rest of the world. A U.S. guest worker program could be similarly constructed within the context of the existing NAFTA agreement and/or the emerging Central American Free Trade Agreement.

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Moreover, a bilateral (or regional) guest worker program offers a number of important advantages that a global program would not. Including a limited number of states expands the role these states may play, and bilateral (or multilateral) enforcement is crucial to protect the rights of both guest workers and native workers. The 1942-64 Bracero Program offers a useful lesson in this regard, since Mexican officials were deputized to oversee enforcement during the first years of the program. As a result, the overwhelming majority of employers were required to meet reasonably generous contract obligations during this period. Only after employers successfully lobbied to eliminate Mexico's enforcement role in 1948 did Bracero labor rights deteriorate, producing the deeply flawed program now criticized by immigrant and labor advocates.

Mexico and other Caribbean Basin states are uniquely positioned to perform such an oversight role. In addition to the existing regional economic institutions, these states have the longest and deepest history of interdependent relations with the United States, and share a common set of values. English is widely spoken in the region just as Spanish is widely spoken in the United States. Mexico's 43 consulates within the United States are one of the largest consular networks in the world, and already immersed in migrant civil society through programs like the PCME, or Program for Mexican Communities Abroad. El Salvador, the Dominican Republic, and other Caribbean Basin states have consciously followed Mexico's lead in this regard, and are likewise well-situated to assist with guest worker oversight.

Of course, the most important reasons to build a guest worker program around Mexico are that it is by far the largest source of undocumented immigration to the United States, and the point of entry for the majority of undocumented immigrants. Thus, while this proposal would completely eliminate all undocumented migration, it does have the potential *to comprehensively address the problem of undocumented migration across the U.S.-Mexican border*, a benefit that can hardly be overstated. To the extent that all over-land labor flows into the United States can be regularized, enforcement agents will cease tracking, detaining, and deporting working people—the endless task which now occupies the overwhelming majority of their time—and anyone caught attempting clandestine entry could be assumed to represent a real security threat.

Additional Questions

Finally, this proposal raises two additional questions. First, will a new guest worker program attract additional undocumented immigrants? Limiting a guest worker program to certain industries and certain nationalities ought to minimize this effect. Nationals from participating countries must also be given incentives to participate as guest workers rather than choosing undocumented migration: an attractive guest worker program would encourage migrants to wait for a legal opportunity rather than

risk disqualification as a punishment for undocumented entry. Finally, sufficient guest workers must be provided to migrant-employing industries so that it is realistic to enforce high fines against employers who continue to violate migration laws. That is, by redirecting undocumented migrants into legal channels, the United States would create the conditions to strengthen supply and demand enforcement.

Second, would a new guest worker program be an “amnesty,” and thus unfair to other migrants now waiting to migrate legally? Theoretically, undocumented Mexicans already within the United States could be required to exit in order to participate, but this would be extraordinarily inefficient and would reduce participation. Thus, there are two responses to this concern. On one level, the benefits of a successful guest worker program—or the costs of maintaining the status quo—are simply too great to pass up as a matter of principle. The program I have described is the least bad solution to a vexing real-world problem. On another level, critics should recognize that the NAFTA area—and the global system more generally—allow the free flow of goods, services, and capital but restrict the movement of labor, placing workers at a distinct disadvantage relative to owners of other factor endowments. Would-be migrants to the United States also know that ample work opportunities exist, and that policy-makers and employers seem committed to protecting these opportunities. In this context, singling workers out for punishment and exploitation simply for responding to these structural incentives is the real injustice.

Conclusions

Current U.S. migration policy fails to provide adequate levels of unskilled labor to meet the demands of the post-industrial U.S. economy. It fails even more grievously to prevent undocumented immigration or secure the U.S.-Mexican border. Of the policy alternatives discussed a well-designed guest worker program to redirect migrants to legal status is the most promising in terms of its likelihood of success, and because it also promotes growth. Previous efforts to redirect migrants into legal channels have failed because they did not adequately protect workers’ rights—to the detriment of migrants and native workers—or provided insufficient incentives for migrants to participate. Yet earlier failures also provide insight into how a successful guest worker program can be designed. In particular, worker protections should be extensive, migrant-sending states should play a central role in guest worker oversight, and migrants should be offered concrete financial and legal incentives to remain within guest worker programs. In this way, a U.S.-Mexican or regional guest worker program can regain control of our immigration policies and the U.S.-Mexican border without undermining U.S. economic production or security.

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