
Reforming US Immigration Policy

Political gridlock currently prevails regarding US immigration policy. This state of affairs makes it difficult to address pressing issues related to illegal immigration and national security: what to do about the 10 million illegal immigrants living in the country, and how to get immigration authorities and intelligence agencies to coordinate meaningfully with one another. There is currently no majority coalition supporting efforts to resolve these problems. Even with his party in control of the executive and legislative branches of government, President Bush's attempts to reform immigration policy have so far been unsuccessful.

The results reported in chapter 4 highlight two sources of opposition to immigration: concern about labor-market pressures and concern about public finances. Naturally, those who believe that immigration depresses their wages or increases their net tax burden are likely to oppose admitting more foreigners. To a large extent, the labor-market consequences of immigration are inescapable. By definition, immigration increases the supply of labor, which will tend to reduce the wages of native workers subject to replacement by incoming foreign workers. The only way to eliminate the labor-market consequences of immigration is to reduce the number of foreigners admitted to the country.¹ By contrast, the adverse

1. Conceivably, workers hurt by immigration could be compensated by taxing those who gain. In practice, such specific redistributive schemes appear to be hard to implement. The Earned Income Tax Credit (EITC), however, is an existing policy that protects low-income workers against negative wage shocks (from any source). When the EITC credit exceeds taxes owed, eligible taxpayers (who must have a valid Social Security number) receive a refund. In 2004, the income cutoffs for eligibility were \$11,490 for an unmarried taxpayer with no children and \$30,388 for an unmarried taxpayer with one child. For poor native workers,

public-finance consequences of immigration are controllable by public policy. If the impact of immigration on the net tax burden of US natives were reduced, it might be possible to forge a coalition behind meaningful policy reform.

There are at least two strategies for policy reform that would dampen immigration's consequences for public finances. One is to change the skill composition of those admitted. By shifting to a system that favors high-skilled immigrants, the United States would attract individuals likely to pay more in taxes than they draw in public services. A second strategy is to restructure immigrants' rights to public benefits. If immigrants were prohibited from drawing on public assistance and certain other public services for a designated period after entering the country, the fiscal drain associated with immigration would be smaller. Either policy would implicitly favor immigrants intending to work over those intending to obtain public benefits.

Tentative moves toward favoring high-skilled immigrants and restricting immigrants' access to public benefits have been made in the last decade. H-1B visas allow high-skilled immigrants to work in the United States for up to six years, mainly in the software and electronics industries. In 2000, at the height of the technology boom, Congress temporarily increased the annual number of H-1B visas from 115,000 to 195,000.² Welfare reform in 1996 in effect imposed a five-year waiting period—the interval between obtaining permanent residence and becoming eligible to apply for citizenship—before immigrants gain access to many government benefits.

This chapter will examine options for reforming US immigration policy. Following a discussion of recent proposals, I will evaluate the relative merits of a skills-based and a rights-based immigration policy.

Proposals for Immigration Reform

In an economy without distortions associated with market failure or public-policy interventions, the optimal immigration policy would be open borders.³ The logic of free immigration is analogous to the logic of free trade. Both contribute to the equalization of prices for factors and goods across borders, which promotes economic efficiency and helps create the conditions for global welfare to be maximized. Barriers to the movement of

the group apparently most affected by labor-market competition from low-skilled immigrants, the EITC offers some protection against policy changes that reduce earnings. For a theoretical analysis of options to protect low-wage workers from immigration, see Sinn (2004). Wage subsidies, of which the EITC is one type, are the least inefficient policy option among those considered.

2. In 2003, after several years of slow economic growth, Congress allowed the number of H-1B visas to fall to 65,000. For more detail, see <http://uscis.gov/graphics/publicaffairs/>.

3. This argument ignores any perceived negative cultural consequences of immigration.

goods or factors lead to inefficient outcomes and leave gains from trade unexploited. Such barriers tend to cause labor-abundant countries like Mexico to have low wages for labor and high relative prices for capital-intensive goods, and capital-abundant countries like the United States to have high wages for labor and high relative prices for labor-intensive goods. In theory, it is possible to achieve efficiency either through free trade or through free immigration, which led Robert Mundell (1957) to conclude that international trade in goods and international movements of factors substitute for one another.

We are, of course, far from a world without distortions. Population growth—whether due to immigration or to other sources—tends to exacerbate distortions associated with poorly defined property rights over air, waterways, highways, and common areas. More people inevitably mean more pollution and more congestion. An increase in the number of low-income people tends to exacerbate distortions associated with welfare policies, prompting Milton Friedman to declare, “It’s just obvious that you can’t have free immigration and a welfare state.”⁴ The presence of these and other distortions means that the United States is setting immigration policy in a less-than-ideal world. In such an environment, it seems likely that a policy of less-than-free immigration would be the constrained optimum (Wellisch and Walz 1998).

Distortions also exacerbate political conflict over immigration. Some US environmentalists oppose immigration because it contributes to population growth. Some fiscal conservatives oppose immigration in the belief that it increases the pool of people who use US welfare programs. Even ignoring distortions, the redistributive effects of immigration create political conflict. Immigration redistributes income between factors of production, raising incomes for some (such as owners of capital) and lowering it for others (such as low-skilled labor). Labor unions’ long-standing opposition to immigration, reversed only in the 1990s when unions began to recruit more actively among recent immigrants, derives in part from immigration’s perceived negative effects on blue-collar workers.

Proposals to reform immigration policy tend to focus on minimizing either immigration’s effect on distortions or its redistributive effects on income. Since the redistributive effects of immigration are unavoidable, policies that attempt to limit immigration’s exacerbative effect on existing distortions are likely to be more appealing on efficiency grounds.

A variety of proposals have emerged in recent years, both inside and outside government, for reform of US immigration policy. President Bush’s plan, known as Fair and Secure Immigration Reform (FSIR), would offer amnesty to some illegal immigrants and expand the number of temporary work visas granted to laborers from Mexico. Little has yet been said about

4. Peter Brimelow, “Milton Friedman, Soothsayer,” *Hoover Digest* 2 (1998). www.hoover.stanford.edu/publications/digest/982/friedman3.html.

how the president's plan would change permanent legal immigration or enforcement against illegal immigration. Congress is also considering legislation on immigration. In 2003 Senators Edward Kennedy (D-MA) and Larry Craig (R-ID) proposed the Agricultural Job, Opportunity, Benefits, and Security Act (AgJobs). AgJobs would offer amnesty to illegal immigrants who had worked on US farms in the preceding 12 months. It would also reform the H-2A visa program for temporary agricultural workers by expanding the number of visas awarded and creating a mechanism for employers to bring in foreign agricultural workers more easily (www.senate.gov/~gsmith/agjob.htm#a). In 2004, Democratic members of the House of Representatives proposed the Safe, Orderly Legal Visas and Enforcement Act (SOLVE), which would legalize unauthorized workers who have been in the United States for at least five years, create a transitional work visa for those who have been in the country for less than five years, and expand the number of low-skilled temporary work visas to 350,000. The executive, Senate, and House plans all focus to varying degrees on temporary visas and amnesty for illegal immigrants. None offers specifics on how to modify enforcement to reduce illegal immigration.

A decade ago, the Commission on Immigration Reform—created by the Immigration Act of 1990 and known as the Jordan Commission after its chair, Barbara Jordan—produced an influential set of recommendations to limit family-based immigration to immediate family members, abolish unskilled legal immigration, expand border and interior enforcement against illegal immigration (including a verifiable identification system), make all legal immigrants (including noncitizens) eligible for public benefits, and promote the Americanization of immigrants (Jordan 1995).

So far, none of these proposals has come close to becoming law. Of the four, only that of the Jordan Commission offers a systematic approach to the level and composition of immigration, the rights granted to immigrants, and enforcement against illegal immigration. It would move the United States decisively in the direction of a skills-based immigration policy, which is also advocated by Borjas (1999a), Huntington (2004), and others.

A Skills-Based Immigration Policy

A skills-based immigration policy would radically alter the mix of individuals admitted to the United States. It would severely limit immigration based on family reunification. The effects on the US economy would probably also be profound. Incoming legal immigrants would be much less likely to use means-tested entitlement programs. Since higher-income individuals also tend to have smaller families, such a policy shift would also reduce immigration's total contribution to population growth (even if the annual number of immigrants admitted to the country remained the same). Low-skilled native workers would probably see their wages in-

crease both in absolute terms and relative to high-skilled workers, reducing earnings inequality in the United States.

One disadvantage of such a policy is that high-skilled immigration would tend to work against globalization. Because the United States is already abundant in skills and capital relative to the rest of the world, admitting primarily high-skilled workers would sharpen international differences in relative factor supplies. This shift would tend to increase the wage difference for less-skilled workers between the United States and the rest of the world and to move the world further from factor-price equalization. Such a move could lower global economic efficiency and welfare.⁵ Poor countries' loss of high-skilled labor could have negative effects on their GDPs and on the performance of their political, legal, and educational institutions.

Another disadvantage for poor countries is that high-skilled emigrants appear less likely than low-skilled emigrants to remit income to their families at home (Orozco 2003). Remittances help offset poor countries' loss in GDP due to the labor outflow associated with emigration. For Mexico, Prachi Mishra (2003) estimates that between 1970 and 2000 emigration increased average wages by 8 percent. By 2000, the number of Mexican emigrants in the United States was equal to 16 percent of the labor force in Mexico. Based on these figures, Mexico's emigration loss in 2000 was 0.5 percent of its GDP. In Mexico's case, however, this loss is more than offset by the income that emigrants remit to family in Mexico, which in 2003 was 2 percent of GDP. On net, residents of Mexico—those who do not emigrate—appear to gain from emigration, with much of the gain presumably flowing to the families of emigrants via remittances. In some countries remittances represent an even larger share of economic activity, exceeding 10 percent of 2003 GDP in Belize, the Dominican Republic, El Salvador, Guyana, Haiti, Honduras, Jamaica, and Nicaragua (IADB 2004). The Inter-American Development Bank finds that in 2003 Latin American immigrants in the United States sent a total of \$31 billion to their home countries, amounting to 1.4 percent of the region's GDP. If poor countries were to send high-skilled rather than low-skilled labor abroad, remittances could decrease, thus reducing their GDPs.

Furthermore, shifting from low-skilled to high-skilled immigration might not have the profound effects on US labor markets that some proponents expect. If the United States took in fewer low-skilled workers from poor countries, wage differentials between the United States and

5. In a Heckscher-Ohlin trade model, high-skilled immigration to high-skilled countries would increase international factor-price differences and decrease global welfare. But such a model envisions no incentive for such migration, because wages for high-skilled labor would be lower in skill-abundant countries. This is not the case in the United States: US workers' wages appear to be higher than wages for workers in poor countries in all skill categories, which probably reflects superior US technology. In a world characterized by cross-country differences in technology, how migration affects global welfare depends on how such migration affects the creation and diffusion of technology.

these countries would probably increase. This shift would tend to increase both US demand for imports from poor countries and poor-country demand for US capital. By reducing the import of labor from Mexico, for instance, the United States would probably increase the import of goods from Mexico and the export of US capital to Mexico. In general equilibrium, these increased trade and capital flows would decrease relative demand for low-skilled US labor and partly offset the labor-market consequences of reduced low-skilled immigration, perhaps leaving low-skilled US native workers only modestly better off than they are now.

To sum up these effects, a shift to a skills-based immigration policy would be likely to reduce the fiscal costs of immigration and to narrow the wage gap between high-skilled and low-skilled labor in the United States. However, these outcomes would entail the potential cost of diminishing well-being in poor countries.

A Rights-Based Immigration Policy

A rights-based approach to reforming immigration policy would phase in immigrant access to government benefits more gradually over time. This goal could be accomplished by means of a graduated set of rights to public benefits, to which immigrants would gain access after having worked in the United States for a specific time period. One way to implement such a plan would be for new immigrants to be issued temporary work visas (of, say, three years' duration) that would give them rights to certain benefits (public education, self-financed medical benefits, participation in a self-financed pension plan) but not others (public assistance, food stamps, public housing, Medicaid). Satisfying the terms of the temporary work visa would result in automatic renewal, and, after a specified number of renewals, permanent residence. After five years as a permanent resident, an individual could apply for citizenship (as is currently the case). Such a plan—which could easily be incorporated into any of the existing proposals for immigration reform—would lengthen the interval between arrival in the United States and eligibility to draw on the full set of government-provided public benefits. This proposal would strengthen the link between admission to the United States and the desire to work, and would reduce the fiscal drain associated with immigration, relative to current policy (and existing legislative proposals).⁶

6. One issue in implementation would be whether to admit immediate family members of temporary visa holders. Currently, the United States allows immediate family members to join temporary visa holders on longer-term visas (such as the H-1B) but not those on shorter-term visas (such as the H-2A or H-2B). Family members are not allowed to work in the United States and are ineligible for most types of social assistance. Conformity with this precedent would entail admitting immediate family members but imposing strict limits on their ability to work and to draw public benefits.

This proposal would also carry welfare reform one step further. Current policy distinguishes between permanent residents and citizens, and makes the former ineligible for a wide range in benefits in some states. Since an individual must be a permanent resident for five years before applying for citizenship, there is already a five-year waiting period before immigrants gain full access to public benefits. A rights-based approach that required completion of one or more terms as a temporary immigrant would create a further distinction between earlier-tenure immigrants on temporary visas and later-tenure immigrants with green cards.

A likely criticism of a rights-based approach is that it would create multiple classes of US residents. Immigrants on temporary work visas would spend a number of years without access to the rights enjoyed by permanent residents, who would in turn enjoy fewer rights than citizens. Advocates for immigrants often criticize guest-worker programs for relegating immigrants to second-class status. What distinguishes a rights-based approach from other guest-worker programs is that it launches immigrants on a well-defined path toward citizenship. It would also afford greater legal certainty to illegal immigrants who chose to convert to temporary legal status.

Labor unions also complain about guest-worker programs, citing the lack of labor rights provided to immigrants. However, it would be feasible to grant temporary immigrants the full set of labor protections that apply to citizens: collective bargaining, a federally mandated minimum wage, unemployment insurance, legally mandated health and safety standards, and the like. In this case, the only difference between temporary immigrants and other workers would be that the former would lack access to the same public entitlement programs.

Employment-Based Admission and Expanded Temporary Immigration

Skills-based and rights-based immigration policies are not mutually exclusive. In principle the United States could enact both by converting family-based admission slots to employment-based admission slots and by converting illegal immigrants to temporary immigrants. Doing so would raise the average skill level of incoming immigrants and shrink the illegal-immigrant population. To pursue adoption of either policy, it would be essential to specify more detail regarding treatment of illegal immigrants, enforcement against illegal immigration, and the composition and level of immigration.

Illegal Immigrants

Temporary work visas would offer a solution to the question of how to deal with the 10 million illegal immigrants currently living in the United

States. A special pool of visas, much larger than the typical annual allotment (discussed below), could be created for illegal immigrants now residing in the United States. The granting of these visas would amount to a limited amnesty for these immigrants. Congress would have to decide which illegal immigrants would be eligible for a visa from the special pool. The most recent amnesty, for instance, offered in 1988 under the Immigration Reform and Control Act, applied to individuals who could demonstrate that they had resided in the United States continuously for the previous six years. Illegal immigrants ineligible for visas from the special pool would still be eligible to apply for regular temporary work visas, which the government would make available on an annual basis. This approach has obvious parallels to President Bush's plan and to the House and Senate plans, although none of those plans has yet specified how temporary legal immigrants would progress to permanent residence.

For an illegal immigrant to obtain a special-pool visa, an employer would have to apply on his or her behalf. This requirement would obligate many employers to admit to having employed illegal immigrants, which is tantamount to admitting violation of the law. To give employers an incentive to help their employees become temporary legal workers, it would probably be necessary to offer immunity from prosecution for certain past illegal employment practices.

Groups that traditionally oppose immigration would probably be vehement in their objections to an amnesty for illegal immigrants. It is almost inconceivable, however, that the United States could reduce the illegal-immigrant population without an amnesty of some sort. One alternative, mass deportations, would require a police effort on a scale never before seen in this country. However intense the opposition to an amnesty, opposition to mass deportations would probably be much more so. One feature of a limited amnesty that might make it more politically palatable than a blanket amnesty is that it would not lead directly to permanent residence but to a temporary work visa. Former illegal immigrants would not be eligible for full public benefits until they had completed the required number of terms as temporary immigrants and a five-year period as a permanent legal resident. Another objection to an amnesty is that it would raise the incentive for illegal immigration. This is a serious concern. To avoid inviting future illegal immigration, the United States would also have to enforce against illegal entry more effectively.

Enforcement

The enforcement policy that has been in place since the early 1990s involves heavy patrols in major cities along the Mexican border, light patrols in unpopulated zones along the same border, and minimal presence in the US interior (Boeri, Hanson, and McCormick 2002). It is noteworthy that

immigration authorities do not track most temporary legal immigrants, making it difficult to determine how many individuals overstay their entry visas. The result of this policy is that, once in the United States, illegal immigrants appear to face little risk of apprehension or deportation.

Clearly, current enforcement policy is ineffective. One measure of its ineffectiveness is that, after the United States dramatically increased border enforcement in the early 1990s, illegal immigration actually increased. Average annual net illegal immigration in the 1990s was 300,000 to 500,000 individuals a year, up from 200,000 to 300,000 in the previous decade (Boeri, Hanson, and McCormick 2002). About two-thirds of illegal immigrants enter the United States by crossing the border with Mexico and about one-third overstay temporary visas.

Effective enforcement requires a strong presence at the borders, but it also requires serious enforcement efforts in the interior. Currently, immigration authorities devote few resources to investigating or monitoring employers who appear likely to hire illegal immigrants (GAO 2002). Occasional attempts to increase interior enforcement meet with fierce political opposition. Following raids of Georgia onion fields during the 1998 harvest, the INS was publicly criticized by the US Attorney General, both Georgia senators, and three members of Georgia's congressional delegation for injuring Georgia farmers (Mark Krikorian, "Lured by Jobs, Illegal Immigrants Risk Death at Border Crossings," *Santa Barbara News-Press*, April 25, 1999). The raids ceased shortly thereafter. Large-scale raids of farms in California, Florida, and Texas, the states that attract the largest concentrations of undocumented workers, are virtually unheard of. In 2000 and 2001, the INS investigated the meatpacking industry in Nebraska and Iowa, reputed to use illegal labor intensively, but made no large-scale raids on plants. Most plant visits by INS agents were announced in advance, as has become standard practice.⁷

What makes interior enforcement difficult is that employers can plausibly deny knowing that they employ illegal immigrants. They are required to ask employees for legal documents (a Social Security card, a green card) and to record this information on forms that immigration authorities can review if they audit the plant. As long as the documents appear genuine, employers are more or less free from legal liability. Since employers do not have to verify the authenticity of employee identification, this check serves only to weed out obvious forgeries.

An alternative approach would be to mandate immediate verification of an employee's legal status. Through the voluntary Basic Pilot Program,

7. The INS strategy was to announce plant visits, ask employers' permission to review employee records, and then interview workers whose records looked suspicious. The many workers who failed to report for their INS interviews lost their jobs. The result of the INS investigation, then, was not monetary sanctions on employers but (indirectly) forced resignations by workers. See "Immigration: In the Vanguard," *The Economist*, October 16, 1999, 31–32.

employers can currently verify the authenticity of job applicants' Social Security numbers with the Social Security Administration (SSA) and the Department of Homeland Security (DHS).⁸ Thus, the SSA and DHS already have a database to which employers can submit electronic requests for information, which makes the verification process trivial. Converting electronic verification from a voluntary program to a mandatory requirement for employment would eliminate plausible deniability on the part of employers. The only way they could hire illegal immigrants would be to keep these workers off their official employment rolls, an unquestionable violation of the law. An alternative (or perhaps a complement) to mandatory electronic verification would be a national identity card, an approach likely to face political opposition from many quarters.

Mandatory verification would also make audits of employers by immigration authorities more transparent. An employer who had failed to verify an employee's Social Security status (for which there would be an electronic record) would be guilty of an infraction. With these procedures in place, a modest increase in interior enforcement could potentially greatly increase its effectiveness. The DHS would also have a record of employment for each temporary legal immigrant, which would be useful for evaluating applications for renewal of temporary work visas.

Immediate verification of an employee's legal status would not increase the information burdens on either employees or employers. Currently, employers must complete and retain I-9 identification verification forms on all employees.⁹ And the technology for electronic verification of employability clearly already exists.

The Composition and Level of Immigration

A rights-based approach to immigration policy could be implemented under current immigration quotas. These quotas reserve the majority of entry slots for family members of US citizens and legal residents. The change would be that new immigrants, whether family-sponsored or employer-sponsored, would receive a temporary work visa rather than a green card. New immigrants would not become permanent residents until they had completed the required number of terms on temporary work visas. The advantage of adopting a rights-based immigration policy is that it could create political support for addressing illegal immigration, including a limited amnesty for illegal immigrants, mandatory employee verification procedures, and new enforcement capabilities.

8. See <http://uscis.gov/graphics/services/SAVE.htm> for a description of the Basic Pilot Program.

9. Employers do not have to submit these forms to the government. They must only make them available in the event of an audit by government inspectors.

However, there is no reason to believe that current admission criteria represent the constrained optimum policy choice for the United States. Neither the skill mix of new immigrants nor the current level of immigration reflects prevailing economic conditions; both are mandated by legislation that changes slowly over time. The inflexibility of existing policy makes it attractive to imagine more extensive changes in the mix and number of individuals who gain admission to the United States.

Under a rights-based program in which immigrants first enter under temporary work visas, it would be straightforward to set entry criteria according to US labor-market conditions. One possibility would be for employers to post information electronically on jobs they desire to fill with temporary immigrants. These postings would reflect the excess demand for labor in the United States. The occupational distribution of postings would in principle indicate where excess demand for labor was the greatest. Foreigners could then apply for job openings, providing information about themselves electronically to prospective employers.¹⁰ The number of foreign applicants per position would be an indication of the excess supply of foreign labor. Occupations in which the number of applicants exceeded the number of job postings (which, realistically, could be almost all occupations) would indicate the existence of queues for jobs in the United States. The length of the electronic job queues in different occupations would indicate to immigration authorities where the economic gains to immigration might be the greatest.

To determine the overall number of immigrants admitted, immigration authorities could also use information on domestic economic conditions. Congress could set a flexible cap on total admissions, such that any excess admissions in years with strong labor demand would have to be offset by fewer admissions in years with weak labor demand. The cap could apply to the total number of temporary work visas that immigration authorities grant. Each year, the number of those with temporary immigrant status would drop as individuals either completed the required number of renewals and obtained permanent residence or had their visas revoked. These outflows would create openings for new temporary immigrants, with net total admissions determined by the flexible cap.

It has been nearly two decades since the last major reform of US immigration policy. Since that time, illegal immigration has increased, the wages of low-skilled US workers have fallen, the short-run fiscal costs of immigration have grown, and immigration has become a more contentious issue in American life. Few would disagree that a new round of policy reform is needed. Meaningful reform will have to address, at the very least, an amnesty for illegal immigrants and enforcement against

10. To give employers and employees an incentive to provide truthful information, it would probably be necessary to charge a fee to list employment opportunities and employment applications.

future illegal immigration. Employers will only go along with reform if they feel they will not lose access to foreign workers. The prospect of an amnesty and continuing high levels of immigration would probably face strong opposition. One strategy for softening this opposition and for forging a coalition behind reform is to convince some current opponents of immigration—such as taxpayers in high-immigration states—that reform is in their interest. It is hard to imagine that this goal could be achieved without lowering the fiscal costs associated with immigration. Distributive conflicts appear to be at the heart of disagreements over immigration policy. Fortunately, policy options are available that can lessen the distributive consequences of immigration and move the United States toward an immigration policy that better serves the national interest.