

A Comprehensive Approach to Immigration Reform

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Introduction

Immigration policy in the United States has historically been formulated in response to changing attitudes and significant events that alter public sentiment. Recently, calls for immigration reform have arisen again in response to the attacks of September 11th and the War on Terror. Government officials and the public fear that the thousands of miles of border shared between the United States and Canada and the United States and Mexico could serve as points of entry for terrorists. Also of significant importance in the recent calls for immigration reform has been the belief amongst parts of the public that the “American identity” is being diluted and undermined by the influx of foreign immigrants, especially undocumented migrants from Latin America, and specifically those from Mexico. This paper seeks to analyze the options for immigration reform in a comprehensive and logical manner, ultimately concluding with a series of concise policy recommendations that draw from the earlier analysis.

Background Information

As of 2004, there were approximately 35 million foreign-born persons living in the United States; this number does not include undocumented persons (Census Bureau, 2005). For a variety of reasons, the exact number of illegal immigrants in the United States is unknown. First, illegal immigration is an organized criminal activity of people smuggling, illegal documentation, and illegal hiring that by its very nature is difficult to track. Second, every level of government has its own agenda that affects how they report their statistics, whether it is local and state governments, or the Border Patrol and the U.S. Citizen and Immigration Services (formerly known as the Immigration and Naturalization Service). Finally, the Census Bureau does not distinguish between legal and illegal immigrants in their studies. Despite the difficulty in coming to an exact number, the accepted estimate for the number of illegal immigrants in the United States is around 12 million, with more than 800,000 arriving annually (Passel, 2006). At this rate, more illegal immigrants arrive in the U.S. every year than legal immigrants. Of the 12 million illegal immigrants currently in the U.S., around 56 percent are from Mexico alone (Passel, 2006).

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The large-scale influx of illegal immigrants is a relatively recent occurrence, with two-thirds of the current number arriving after 1995. In the 1980s, an estimated 180,000 immigrants came per year on average. This number increased to 400,000 a year from 1990-1994, and increased to 575,000 a year from 1995-1999. For the time period 2000-2005, an estimated 850,000 illegal immigrants came to the U.S. every year. Illegal immigration from Mexico has followed this trend, with 1.5 million of the current 6.2 million illegal Mexican immigrants in the U.S. having come between 2000 and 2005 (Passel, 2006). Finally, 80-85 percent of new settlers in the U.S. from Mexico are illegal aliens (Passel, 2005).

There are two issues that draw illegal immigrants to the United States: jobs and family. The average Mexican worker earns one-tenth of his American counterpart, and many American businesses look to hire illegal immigrants because they are cheap and compliant sources of labor (Zamora, 2008). Although it is against the law to hire illegal immigrants, most American businesses go unpunished because of the lack of a national system to verify new workers' eligibility and the emphasis placed on border enforcement over interior enforcement. Finally, the growth in legal immigration (in 1970 there were fewer than 800,000 legal immigrants from Mexico, compared with nearly 8

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million in 2000) correlates directly with the growth in illegal immigration (Camarota, 2001). Legal immigrants promote illegal immigration by providing jobs, housing, and money to relatives and friends seeking entry to the U.S. (Camarota, 2001).

With the surge in illegal immigrants has come the increased effect they have on American society. Illegal immigrants play important roles in our economy; undocumented individuals account for 58 percent of the agricultural labor force in the United States and just under 25 percent in private household services (LaRosa & Ingwersen, 2007). Also, illegal immigrants contribute more than seven billion dollars per year to Social Security and Medicare, systems for which they will never be eligible (Porter, 2005).

The increase in illegal immigrants has created a surplus of unskilled labor which has depressed the real wages paid to unskilled workers. This poses a serious problem for the approximately 10 million Americans who are high school dropouts. Economists speculate that if every illegal immigrant disappeared, the average wage for high school dropouts would increase by about \$25 a week (Davidson, 2006). Also of significance has been the impact of illegal immigrants on government budgets. Since nearly two-thirds of illegal immigrants lack a high school degree, they create a fiscal deficit due to

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their low income levels and tax payments. It is estimated that households headed by illegal aliens imposed more than \$26.3 billion in costs on the federal government in 2002, while paying only \$16 billion in taxes (Camarota, 2004). Among the largest costs in 2002 were Medicaid (\$2.5 billion), treatment for the uninsured (\$2.2 billion), food assistance programs such as food stamps and free school lunches (1.9 billion), the federal prison and court systems (\$1.6 billion), and federal aid to schools (\$1.4 billion) (Camarota, 2004).¹ The cost of illegal immigrants outweighs the benefits (strictly in expenditures vs. revenue) for local and state governments as well. It is important to note however, that on average, the costs that illegal households impose on the federal treasury are less than half that of other households, but since their tax payments are only one-fourth of other households', they still impose a net fiscal burden on the country (Camarota, 2004). Also, illegal immigrants contribute to the economy by consuming goods like

¹ Illegal immigrants qualify for these services for a host of reasons. Prior to the Deficit Reduction Act of 2005, one did not have to be a U.S. citizen to qualify for Medicaid. Likewise, it is against the law for hospitals to turn away sick patients even if they are illegal aliens and/or lack insurance. Also, the children of illegal immigrants are not barred from entering the public schooling system, even if they were not born in the U.S. Therefore, these students receive free school lunches and cause more and more federal aid to be designated to schools. Finally, illegal immigrants that commit crimes are often not deported right away. The U.S. Justice Department estimated that 270,000 illegal immigrants served jail time nationally in 2003. While the cost of jailing these illegal aliens falls mostly on the state governments, the federal government does reimburse the states for some of their costs through the State Criminal Alien Assistance Program.

everyone else; illegal immigrants buy food, get haircuts, and purchase homes. Overall, economists believe when the effect of illegal immigrants is averaged over the entire economy, the result is a small net positive; it increases American wealth by less than 1% (Davidson, 2006).

While illegal immigrants don't have a huge effect on the U.S. economy, they help provide one of the largest sources of capital for their home countries in the form of remittances. For 2006, the Inter-American Development Bank estimated that Latin American migrants working in the United States sent around \$45 billion to their countries of birth (Inter-American Development Bank, 2006). Mexico alone received \$23 billion in remittances in 2006, most of which came from Mexicans living in the United States. In fact, remittances have overtaken tourism to become the second biggest source of foreign income for Mexico after oil exports (Reuters, 2007). Remittances however, do act as a pull factor for migration to the United States. In a recent Pew Hispanic Center report, 19 percent of all Mexican adults (this represents 13.5 million people) answered positively when asked "Are you thinking about emigrating to the United States?" Remittance receivers were more likely (26 percent) to have migration in mind than those who do not receive remittances (17 percent) (Suro, 2003).

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Of equal importance to the immigration debate is the public's perception of the issue. The public's perception of the problem has influenced and even guided policy in the past, and will most likely continue to affect policy making in the future. For instance, Americans tend to see illegal immigration as a security threat – it increases terrorism danger and contributes to crime - rather than an economic threat (Pew Research Center, 2006). This has led past policy to be focused primarily on border security. In another example, a plurality of Americans (44%) believe the majority of immigrants in the United States are here illegally even though this is not true (Pew Research Center, 2006).¹ As such, when talk of immigration “reform” occurs, it is usually with the goal of reducing illegal immigration rather than redefining the laws governing legal immigration, which affect both legal and illegal immigrant flows.

Also of importance in influencing immigration policy is the fact that the illegal immigration population affects some states more than others. More than two-thirds (68%) of the unauthorized population live in just eight states: California (24%), Texas (14%), Florida (9%), New York (7%), Arizona, (5%), Illinois (4%), New Jersey (4%), and North Carolina (3%) (Passel, 2005). In addition,

¹ Legal immigrants outnumber illegal ones by more than two to one.

states along the border have different concerns from states in the interior. Therefore, when Congress addresses the issue, the states will likely be divided over the best course of action.

Past and Current U.S. Policies

The large influx of illegal immigrants from Mexico starting in the 1980s increased calls for immigration reform. Under pressure to do something, President Reagan signed the Immigration Reform and Control Act of 1986 (IRCA) into law. IRCA made it illegal to knowingly hire or recruit undocumented workers, required employers to verify their employees' immigration status with the I-9 form, and granted amnesty to some 2.7 million undocumented workers who had entered the United States before January 1, 1982 and had resided here continuously.¹

By criminalizing the act of knowingly hiring illegal immigrants, IRCA hoped to reduce illegal immigration by reducing the availability of jobs to undocumented workers. However, IRCA failed because it spurred the overnight development of a false documentation industry. Fake documents protected employers from prosecution

¹ Most of these workers were agricultural laborers living in the southwestern United States who had originated from Mexico and other Central American countries.

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under IRCA because they simply had to take a passing glance at them to fulfill the stipulation that they not knowingly hire undocumented immigrants. Also, due to political reasons, there continued to be an emphasis on enforcement at the border over enforcement of employers. Specifically, the decline in workplace enforcement has been the direct result of local political pressures in regions where the economy is dependent on immigrant labor (News Batch, 2007). As a result, in 1990 less than 8 percent of the Immigration and Naturalization Service's (INS) enforcement manpower was devoted to worksite inspections, and of the 1.56 million apprehensions the Border Patrol made in 1996, only 12,100 occurred at U.S. farms or other worksites (Hanson & Spilimbergo, 2001). As such, rather than ending illegal immigration, or even reducing the flow from Mexico and Latin America, IRCA encouraged lawlessness as people created fake documents (which can currently be found in any immigrant community in the border zone) and employers learned to look the other way (LaRosa & Ingwersen, 2007).

Many officials had high hopes for the North American Free Trade Agreement (NAFTA) as a potential tool for reducing labor flows from Mexico into the United States. By generating jobs and increasing wealth in Mexico, NAFTA, in theory, would reduce the pull

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effect of wages in the U.S. However, since NAFTA did not implement an integrated labor market between the United States, Mexico, and Canada (workers cannot travel freely across the borders to find work whenever they desire), there has been no convergence in wage rates for U.S., Mexican, and Canadian workers. NAFTA also increased the number of *maquila* plants (manufacturing plants that import and assemble duty-free components for export) operating near the U.S. border (“Maquiladora,” 2008). In 1993, there were approximately 2,000 plants operating along the U.S. border, with close to half a million people employed in them. Just four years after NAFTA, that number had increased to nearly one million people. The growth of people employed at *maquilas* has accelerated the pace of illegal immigration to the United States; people usually migrate in stages, and the first step in the process is a brief stay in the border cities of Reynosa, Juarez, or Tijuana where many *maquilas* are located. Finally, the *maquila* plants have not been able to absorb the entire supply of Mexican laborers seeking to work in them. Those who are unable to find a job in a plant can either return home or cross the border to the United States in search of work (LaRosa & Ingwersen, 2007).

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President Clinton attempted to tackle illegal immigration through greater border enforcement along the most highly used entry paths. During his administration, numerous INS enforcement operations were launched. For the sake of brevity, I will focus on only one: Operation Gatekeeper. Operation Gatekeeper, which was launched in 1994, focused on the 66-mile long San Diego Sector, which has traditionally been the preferred location for illegal immigration from Mexico to the U.S.¹ Specifically, the Border Patrol sought to move immigrant flows eastward, away from the 14 mile stretch of border west of Otay Mountain, which lies in front of the San Diego metropolis area, where, once past the border, immigrants can easily blend in. The 52 mile portion of the sector east of Otay Mountain is marked by deep canyons, thick brush, steep mountains, and an absence of urban infrastructure and transportation facilities. The region also experiences extreme temperatures, that when coupled with the geographic qualities of the area, led the Border Patrol to believe it would have a strategic advantage over would-be crossers (Department of Justice, 1998).

¹ There are a total of 21 sectors patrolled by the Border Patrol along the U.S.-Mexican border.

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Before Operation Gatekeeper's implementation, there was no coherent strategic plan in terms of border security, other than to apprehend as many illegal immigrants as possible. Gatekeeper shifted the operational emphasis from apprehension to deterrence and prevention. Agents were moved to "high visibility" positions along the border and the station received new equipment, such as four-wheel drive vehicles, infrared night scopes, and electronic sensors. By 1997, the enforcement budget of the INS had reached \$800 million, the number of Border Patrol agents had nearly doubled, the amount of fencing or other barriers more than doubled, and the number of underground sensors had nearly tripled (Department of Justice, 1998).

In response to Gatekeeper, migration routes shifted eastward and the use of professional smugglers, known as *coyotes*, increased. Before Gatekeeper, the San Diego sector accounted for more than 40 percent of all apprehensions. In 2000, the sector accounted for only 9 percent, despite the fact that total apprehensions along the U.S. border rose from 1994-2000 (Cornelius, 2001). The Department of Justice, the INS, and the Border Patrol believe Operation Gatekeeper is a success because it has accomplished its objectives. Various congressmen and academics, however, have criticized the program and

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declared it a failure since it only took San Diego sector's problem and transferred it onto other sections of the border (mostly Arizona).

In 1996, President Clinton signed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) which addressed both legal and illegal immigration, but had its most important effects on illegal immigration. Its principal goals were to address border security, increase the number of agents doing interior work (investigating employers and tracking down visa violators), overhauling the procedures for removing aliens, and providing new provisions to fight alien smuggling and document fraud. On the enforcement side, IIRIRA provided for the hiring of 5,000 new Border Patrol agents over five years, a 14-mile triple fence along the border from San Diego eastward, new state-of-the-art equipment for the INS (aircraft, helicopters, night vision goggles, etc.), 300 additional INS personnel to investigate alien smuggling and the unlawful employment of aliens, and 300 more investigators to target visa overstayers (Visalaw, 2007). Most importantly, IIRIRA empowered state and local law enforcement agencies to perform immigration law enforcement functions, thereby drastically increasing the scope of interior enforcement overnight (Immigration and Customs Enforcement, 2006). This has become extremely important post-9/11, since the

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Border Patrol has been ordered to focus solely on border enforcement and forgo interior enforcement, which the newly created Immigration and Customs Enforcement agency (ICE) is tasked with handling.

With regard to combating smuggling and document fraud, IIRIRA added to the list of federal racketeering crimes a number of immigration-related offenses, such as reproduction of naturalization or citizenship papers. IIRIRA also increased the penalties imposed on criminals convicted of alien smuggling, and added 25 Assistant US Attorneys tasked with investigating alien smuggling. Most importantly, IIRIRA included harsher exclusion penalties for aliens who were caught in the U.S. Under IIRIRA, those who are unlawfully present in the U.S. for 180 days, but less than a year, are barred from being admitted in any legal status to the U.S. for a three year period. Those who are unlawfully present in the U.S. for over a year are barred from being admitted in any legal status for ten years (Visalaw, 2007).

Overall, both Operation Gatekeeper and IIRIRA failed to stem the flow of illegal aliens from Mexico. While greater enforcement of the border and interior are necessary parts of any illegal immigration policy, they must be complemented by programs designed to deal with the reason why most immigrants come in the first place: economic

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opportunity. This requires some serious philosophical soul searching, as the country needs to decide how it will go about doing this (guest-worker programs, database of eligible workers, etc.).

President George W. Bush attempted to pass comprehensive immigration legislation during his second term, but ultimately Congress was unable to devise a bill that received bipartisan support. This has left Bush with limited resources to combat illegal immigration. So far, his main focus has been increasing border security and ramping up interior enforcement, areas where he has made considerable progress.

Current Legal Immigration Policy

While jobs and family act as the two main draws for illegal immigrants, why do they migrate illegally rather than legally? To fully address the issue of illegal immigration, we must realize that our current legal migration policies contribute to the problem. Our current immigration laws were established by the Immigration and Nationality Act of 1965, which replaced the national origins quota system first instituted in 1921. Under our post-1965 immigration policies, foreigners who want to immigrate to the USA have a limited number of routes; most are sponsored by a relative (who must be either a U.S.

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citizen or legal permanent resident) or an employer. The only immigrants allowed into the country without a sponsor are refugees, asylum seekers, or the 50,000 people annually who win the State Department's visa lottery. In this system, spouses of U.S. citizens, as well as parents and children under 21, are granted immediate entry. Everyone else goes to the end of lines that vary in length according to country, the prospective immigrant's relationship to the U.S. sponsor, and profession (Jackson, 2006). Current law limits how many people every nation can send. No more than 7 percent of the visas issued every year can go to a single country, and the cap is universal, applying to Mexico and all other countries equally. Immigrants from China, India, Mexico and the Philippines - some of the largest applicant pools - wait the longest (Malone, 2006). For example, according to the State Department, experienced laborers from India face a five-year wait for a visa, while Filipino siblings of Americans wait more than 22 years (Jackson, 2006). Consequently, the long wait for legal admission prompts applicants and potential applicants to attempt illegal migration, either through illegal border crossings or by overstaying a travel visa.

Part of the reason for the long wait times has been the massive wave of immigration since 1965; over 18 million people have legally

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immigrated since our current policy's inception, with millions more applying and still waiting for entry. The surge in immigrant applications has far exceeded the ability of our current policy to cope with the issue, and has overwhelmed the processing abilities of the U.S. Citizenship and Immigration Services department (USCIS). More importantly, the emphasis on family reunification rather than employment creates a vacuum in the labor market that is by necessity filled through illegal immigration; certain businesses in the United States rely heavily on immigrant labor (notably agriculture), a need the current immigration policy does not address. The current limit on employment-based immigrant visas is 140,000 (which includes spouses and minor children of the sponsored immigrant). Today, an employment-based immigrant in the "skilled workers and professionals" category can expect to wait at least 5 years for a green card. The wait for entry in the "other workers" category, which serves lesser skilled workers, is even worse, since the cap is 10,000 migrants a year (Anderson & Miller, 2006). This is particularly important with respect to illegal immigration, since most illegal aliens are unskilled laborers. As a result of the quota, the supply of legal unskilled workers does not meet demand. The consequence is strong demand from certain sectors of the U.S. economy for illegal immigrants.

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These pitfalls in our current legal immigration laws, while significant, do not require a complete change in policy. Rather, a few simple measures can be enacted to address these flaws and the effect they have on illegal immigration. These policies are explained in the section below.

Policy Recommendations

Two basic approaches have emerged for reducing the flow of illegal migrants: one emphasizes increased enforcement at the border with Mexico, and the other emphasizes greater enforcement of the Immigration Reform and Control Act of 1986 which criminalized the employment of undocumented workers. Greater enforcement at the border has been Washington's policy of choice since the 1990s, while the issue of stricter enforcement of the IRCA has just recently received serious consideration. Ultimately, definitive resolution of the issue will require a comprehensive immigration bill that addresses border security and interior enforcement, establishes a guest worker program, streamlines the legal immigration program, and provides a path to legal immigrant status for the 12 million illegal aliens already in the country.

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Any attempts to solve illegal immigration through increased border control alone will fail like past attempts, and more importantly, strain relations with the Mexican government and the rest of Latin America. Building fences and hiring more Border Patrol agents sends a negative, xenophobic message to our southern neighbors. We must stress that immigration reform is not about keeping Latin Americans out of the United States, but about making sure they enter in a legal, orderly, and proper way. This fact further increases the need for any immigration reform to be comprehensive in nature. By addressing more than just border control, we can avoid creating tension with Latin America.

In light of the statistics, the effectiveness of our past policies, and the nation's current needs, comprehensive immigration reform should include the following policy steps:

- 1) Establish a guest-worker program that serves many industries, where undocumented workers can work in the U.S. for a fixed amount of time on the condition that they return home each year. Under this program, if the workers abide by the rules and commit no crimes, they could continue to come to the U.S. via the worker program every year, where, if they stay in

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the program for 10 years, they would be granted legal immigrant status regardless of family connections in the U.S. While in the program, workers would be barred from applying for legal immigration status so as to prevent people from abusing the system. Such a program would allow illegal workers to come and receive the high wages they seek, provide certain industries the labor they need, and establish a path to legality.¹ Also, making the laborers return home during their 10 years on the worker program would ensure that some capital (labor and financial) stays in the home countries, thereby reducing the conditions that make workers seek entry to the U.S. in the first place.

¹ Having a path to legality is a must in the eyes of illegal immigrants and their politicians such as Teodoro Maus, the former Mexican consul general stationed in Atlanta, who was responsible for Georgia, Alabama, Tennessee and South Carolina. He states, "The U.S. economic structure has been, since the establishment of this nation, based on immigrant labor, groups that came - some documented some not -- with a dream. Immigrants that suffered, were exploited, mistreated, discriminated and, ultimately, incorporated as a wonderful addition to the tapestry that integrates the United States. When will we realize in Georgia that we do need those 16-hours-a-day-laborers; that they do contribute positively to our economy? That they are "illegal" because the existing federal legislation is inefficient and useless and there is at present no door to legality for them, no matter how much they have already given to our society?" (Maus, 2006).

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- 2) Create a national database of eligible workers that employers must check in order to legally hire new workers. This is actually supported by the majority of Americans (Pew Research Center, 2006).
- 3) Significantly increase interior enforcement and prosecution. Not only will this clamp down on employers who hire illegal immigrants, but it will also help reduce the number of people who overstay their visas.
- 4) Secure the border in a reasonable, cost-effective way. Building a giant wall is impossible and undesirable. Rather, the best option is to increase the number of Border Patrol agents, while installing high-tech equipment that allows these agents to monitor all sectors of the border at all times.
- 5) Increase the funding of, and modernize the infrastructure of, the U.S. Citizenship and Immigration Services. Currently, the USCIS is funded primarily through application and other user fees. This has crippled the agency's ability to pay for expansions and upgrades, causing numerous projects

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to be abandoned or halted mid-completion due to a lack of funds. To address this problem, Congress should provide more direct funding for the agency. The result will be a USCIS that can process applications faster and more efficiently.

- 6) Expand the green card quotas for family-sponsored and employment-based immigrants. If more spots are available for family members and unskilled workers to enter the country legally, the incentive to immigrate illegally declines. If interior enforcement is also increased, the incentive to immigrate illegally will decrease as the risk of getting caught rises. The same is true for employers, who would have less incentive to hire undocumented workers as the chance of getting caught rises. Under this scenario, more people will be willing to wait in line to immigrate legally and the supply and demand for legal unskilled labor will be better balanced.
- 7) Provide a path to citizenship for the 12 million illegal aliens already living within the U.S. This is explained in greater detail below.

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Some might suggest there is no reason for a guest-worker program if the quota for employment-based immigrants is raised. However, the majority of the employment-based quota increase will go to highly skilled workers for political, economic, and social reasons (Agence France-Presse, 2008). As a result, even though the number of unskilled workers immigrating legally each year would increase, the increase would still be insufficient to meet employers' demands. Thus, an effective guest-worker program continues to be important. It provides a similar service, but is more acceptable both here and in Mexico. Together, the guest-worker program and the quota increase will help to drive down demand for unskilled illegal immigrants in a politically acceptable manner, and in a way that will continue to support the U.S. economy.

With regard to the nearly 12 million illegal aliens already in the country, the only feasible policy is to offer a path to legal immigrant status after paying a fine and meeting several requirements (for example, no criminal history and continuous residence in the U.S.). These aliens would have to go to the back of the line to gain legal status, but would be allowed to remain in the U.S. until they receive their new legal status. Unfortunately, this measure is considered unacceptable by large sectors of the public and will face opposition in

Congress. Other plans that try to address the current illegal population by requiring all aliens to return to their home country at some point are viewed more favorably by the public, but are entirely unenforceable and therefore doomed to fail. If the only politically acceptable route to an “amnesty” provision is to increase border security substantially, it is a compromise we should be willing to make.

Conclusion

Illegal immigration is a complex issue. While the policies outlined in this paper offer the best possible measures to reduce illegal immigration in a comprehensive and logical manner, we must realize that illegal immigration is not an issue entirely controlled by the United States. Rather, illegal immigration is an “intermestic issue,” meaning a domestic issue pertaining to one country that requires a multi-country solution. To halt illegal immigration fully, countries like Mexico will have to grow their economies. Until better paying jobs and a higher quality of life are available in these countries, the U.S. will continue to be viewed as the only path to opportunity. Until then, the United States must try to improve its currently inadequate policies governing illegal immigration.

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