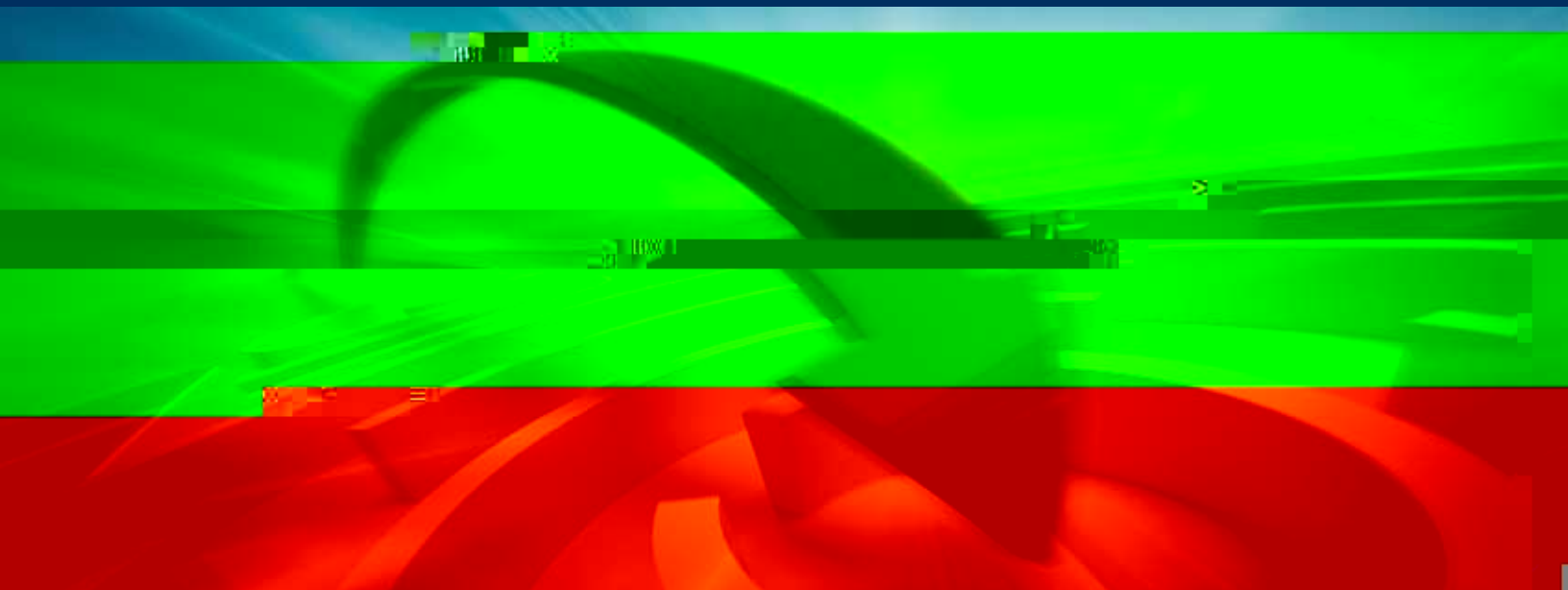


# Breaking the Immigration Stalemate



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From Deep Disagreements  
to Constructive Proposals

A REPORT FROM THE BROOKINGS-DUKE  
IMMIGRATION POLICY ROUNDTABLE

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### CONVENERS:

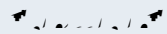

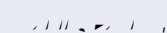
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(2009)

# BROOKINGS-DUKE IMMIGRATION POLICY ROUNDTABLE

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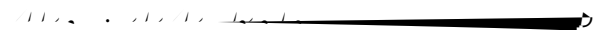
Frey, David Frum, Mark Goldberg, Héctor Cordero-Guzmán, Ron Haskins, Ron Hira, Michael Hofer, Ana Iparraguirre, Richard Keeley, Janice Kephart, Mark Krikorian, Steven Lagerfeld, Irene Lee, Mark Lopez, Patrick Maney, Tom Mann, David Martin, Phil Martin, Andrés Martínez, Larry Mead, Shep Melnick, John Mollenkopf, Tyler Moran, Hiroshi Motomiya, David O'Leary, Sam O'Neal, Mark Rosen, Suzanne Shanahan, Frank Sharry, Bill Tegeler, Steven Teles, Jessica Vaughan, Patrick Weil, Darrell West, and David Winston.

### CONVENERS:



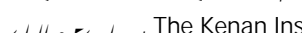
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# INTRODUCTION

Overarching these two perspectives were opposing un-



## BACKGROUND & RECOMMENDATIONS

**F**or several years now, the national debate over immigration has been deadlocked. On one side, anxious and often angry citizens want to punish or even deport millions of illegal immigrants and then secure the borders against further intruders. Other Americans want to regularize the status of the undocumented and find ways for subsequent newcomers to arrive through more orderly channels. In the meantime, the need for critical reforms of the system by which legal immigrants are admitted here has gone unaddressed. And since 9/11, a new and compelling dimension—national security—has heightened the stakes in immigration policy-making.

A new administration has now committed itself to immigration reform, but it already has a full agenda of other urgent issues to address. It remains unclear how much political capital President Obama will either have or be willing to expend on immigration. Despite the problems associated with our broken immigration system,



For the same reason, our group concludes that the backlog of approximately 600,000 immediate family members (spouses and minor children) of legal permanent residents waiting—many for years—to apply for visas should be addressed immediately. We are also committed to the position that for undocumented immigrants who qualify for legalization, their spouses and minor children living outside the United States should be allowed to join them here as legal immigrants.

Finally, our Roundtable advocates an increase in the

## Congress Should Improve Temporary Worker Programs and Bolster Labor Market Protections

Roundtable members are mindful that the basic admissions categories just discussed have not fundamentally changed over the last half-century, and we generally agree with other analysts that our immigration policy is consequently rigid and unyielding. But not always.

The 11 million legal permanent residents admitted annually represent only part of the legal immigration story. As many as 600,000 additional individuals come here every year to live and work on temporary work-based visas. In recent years, a good deal of attention has been paid to skilled workers with H-1B visas, who are of particular interest to high-tech employers. But our system has more than 25 such visa categories, which constitute a shadow system of temporary employment. While this array of specific programs is highly adaptive and responsive to employers, it has escaped public debate and scrutiny, while lacking any overall coherence.

Our group recommends several measures to improve this system, including, whenever feasible, replacing temporary employment visas with provisional visas that would be portable and not tie workers to any one employer. We also urge that such provisional visa holders have the option of eventually achieving permanent status. We are mindful that such adjustments would need to be reconciled with overall limits on immigrant admissions, which is one of several tasks we would assign to a new independent Standing Commission on Immigration.

### Specific Recommendations:

- Replace temporary employment visas with non-renewable, five-year provisional visas to the extent feasible, and provide visa-holders the option of moving to LPR status.
- Make temporary and provisional employment-based visas portable across employers, following an initial employment period.
- Increase oversight of temporary worker programs, including consideration of increased fees and intensified random post-hiring audits.

## Congress Should Establish an Independent *Standing Commission on Immigration*

Our group also concluded that something more than these specific measures is necessary. Both facets of our immigration system—legal permanent resident admissions and temporary employment visas—need more careful analysis and thoughtful deliberation. A highly detailed restructuring of the admission and visa systems is beyond the scope of this report, but we believe the process we initiated suggests how future immigration policy-making might proceed.

Hence, our report advocates the creation of an independent agency, to be called the Standing Commission on Immigration. Composed of commissioners with lengthy, staggered terms (we suggest a minimum of seven years), and backed by a permanent staff of economists, demographers, and other social scientists, such a body could provide the kind of deliberative forum that immigration policy has lacked. The Commission would have a broad mandate to issue reports and studies on various aspects of immigration policy. It also would be specifically charged with recommending overall visa category ceilings to Congress every two years. Through these activities, it would also serve an agenda-setting function. While we envision the formal powers and responsibilities of this Commission as limited, we also see its purview as broad and not confined to labor market issues.

### Specific Recommendations:

- Congress should establish an independent Standing Commission on Immigration that is charged with issuing a biennial report to Congress with specific recommendations on ceilings for permanent and temporary admissions categories and any changes in the nature of those categories.
- The law establishing the Commission should require that Congress either adopt, amend, or replace the Commission's recommendations within a specified period after their release.
- The law should require the Commission to issue advisory studies and reports on various aspects of immigration and assimilation policy.
- The law should require that the Commission be bipartisan and composed of an odd number of members, nominated by the President and confirmed by the Senate, who serve staggered and extended terms of at least seven years and are supported by a permanent professional staff.

## Public and Private Sectors Alike Should Increase Efforts to Assimilate and Integrate New Americans

The assimilation and integration of newcomers are critical to the success of national immigration policy. We therefore recommend the creation of an Office of New Americans (ONA) within the Executive Office of the President to oversee and coordinate the various efforts at all levels of government critical to the success of immigrants and their children. We would place this office in the White House—not only because this is where its efforts can best be coordinated across multiple departments, but also because its objective is too important to be left to any single agency. From the Executive Office of the President, ONA could foster the kind of national movement that is called for.

### Specific Recommendations:

- The federal government should establish an Office for New Americans (ONA) located in the Executive Office of the President that is charged with overseeing a network of state and local governments, enhancing the capacity of relevant voluntary and non-profit organizations, and coordinating the work of federal agencies in efforts to facilitate immigrants' assimilation and integration into mainstream American society.
- ONA should promote flexibility in federal support for different approaches to teaching English, encourage the funding of language programs contingent on educational outcomes, and advance public/private partnerships that develop innovative language-learning curricula that take advantage of new information technology.
- Both the public and private sectors should strengthen efforts to involve immigrant parents in early childhood programs, to retain immigrant youth through high school graduation, and to encourage higher education.
- Public and private sectors should strengthen the incorporation of core civic principles and U.S. history into the content of naturalization preparation, English language courses, and educational instruction for Americans.

## The United States Should Engage Mexico

Finally, our Roundtable acknowledges the special relevance of Mexico to any prudent consideration of U.S. immigration policy. Immigrants from Mexico constitute a huge and almost unprecedented proportion of the influx that has now gained the nation's attention. Not only do the two nations share a lengthy border, but over the years they have repeatedly contested that border, resulting in a complicated and sometimes painful history.

Despite past difficulties, the United States and Mexico now need to cooperate to address issues of mutual concern, particularly immigration. Even those in our group who would emphasize the primary importance of our responsibilities to our fellow citizens acknowledge the compelling moral and prudential nature of our obligations to our neighbors to the south, as well as around the globe. All in our group recognize the present opportunity to engage Mexico in reducing the cross-border flows of illegal drugs, guns, and migrants and in managing other areas of shared interest and responsibility.

### Specific Recommendations:

- The United States should create or invigorate institutions for regional cooperation and investment that mediate disputes across a spectrum of issues, including immigration, and that strengthen economic development and civil society in the hemisphere.
- The United States should bolster arms interdiction, law enforcement collaboration, and security and judicial reform in Mexico.
- The United States should cooperate closely on border security and safety.



# Enforcement and Legalization

**T**he best estimates suggest that approximately 11.9 million immigrants are in the United States illegally. Some of these individuals have been here for many years with steady employment histories and roots in local communities. Their continued presence is the result of our failures to devise and implement effective immigration policies. These individuals are also here, however, because of choices they made and chances they took to live here without papers. So what do we do now?

Even if sending 12 million people home were feasible, it would be a catastrophic choice—enormously expensive, diplomatically disastrous, and hugely costly in human terms. Neighborhoods would be torn apart, families would be separated, and a new and sorry chapter in American race relations would be written. Less draconian measures enforced by officials at all levels of government to encourage illegal immigrants to leave on their own also were examined by our Roundtable, and none passed muster. Some of us rejected such “attrition through enforcement” as offensive to our values. Others thought that because such a strategy would be unlikely to be rigorously or consistently implemented, it would therefore ultimately be ineffective.

Nevertheless, Americans remain deeply troubled by the challenge to social order and to the rule of law represented by the significant number of illegal immigrants in our midst. Many Americans are equally concerned that our current immigration laws are unworkable. Past failures

achieve meaningful enforcement // an effective path to legalization through a series of linked confidence-building measures. The key is to give everyone involved incentives to make sure that enforcement and legalization provisions work together. While the specifics will necessarily need to be worked out in greater detail, here we offer guideposts toward such a scenario.

## Securing the Future: Labor Laws and Workplace Verification

Because workplace enforcement addresses the demand for labor—the main force driving illegal immigration—it can be the most humane and effective means of reducing future illegal immigration into the United States. Successful workplace enforcement requires both stepped-up efforts to penalize employers who violate wage and labor laws and a credible verification system to deter future hiring of unauthorized workers.

Violations of basic wage and hour laws, occupational health and safety regulations, and workers’ compensation laws hurt workers as well as employers who follow the rules. Over time, the rule of law is eroded. Enforcing longstanding workplace legislation and regulations is therefore an important task in itself. It is also one that targets employers who often knowingly violate immigration law. Different employers will present different challenges. Large corporations may comply readily, or they may summon the resources to resist. Small, informal businesses—often run by immigrants—may exploit co-ethnics as much or more than large firms but be harder to regulate.

Since the 1986 Immigration Reform and Control Act, workers have been required to show identity documents to their employers. Yet the process has been fatally compromised, because counterfeit documents are easily obtained, and employers have been severely constrained when checking their validity. Simply put, the law is a charade.





## Legalization and Enforcement: Additional Measures

Two remaining issues need to be addressed: What to do with unauthorized immigrants who do not qualify for legalization? And what additional enforcement measures are necessary to ensure that a sizeable, new unauthorized population does not build up again?

Our estimates suggest that a significant number of those currently residing here illegally—as many as 70 percent—would qualify for legalization. Nevertheless, this would leave a substantial number of unauthorized immigrants who do not meet the criteria proposed above. We must find effective and humane ways to address the resulting dilemmas.

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same time, we acknowledge that the relatives of LPRs who would be excluded by our recommendation—adult unmarried children—have typically followed the rules. Yet their disappointment should be weighed against the increased likelihood that many of them would gain entry with employment-based visas whose numbers we urge be increased. Still other extended family members of current LPRs would obtain visas under our legalization proposal.

## **Improving Temporary Worker Programs**

Public controversy and legislative attention have focused on illegal immigration and on the more than 1.1 million LPRs admitted to the United States annually. Less attention is paid to the additional 600,000 individuals admitted each year on temporary work visas. About a quarter of these are unskilled agricultural and other seasonal workers, but most are skilled and educated workers, many of whom are professionals, managers, and executives who come here (with their spouses and children) to work for U.S. and other global enterprises. Many, perhaps most, of these

here permanently may deter some who could make important contributions to our economy and society. To respond to this reality, we recommend a program of non-renewable provisional visas valid for a fixed term of five years, at the expiration of which individuals would have the option of either returning to their country of origin or applying for permanent status (assuming other relevant criteria have been met).

weighed against the need to encourage more Americans to undergo the rigors of education and training necessary to pursue productive careers in these fields.

A variety of questions and policy options need to be considered here. Should firms that have employed temporary workers in the past without problems be afforded expedited processing of new visas? (Or, if not, how do we ensure that previous applicants with blemished records would be subject to particularly intense scrutiny? Should substantially increased fees be charged to firms importing temporary workers in order to better reflect the savings they gain when not hiring American workers? If so, would employers have greater, more meaningful incentives to seek out American workers? To avoid burdensome and potentially costly regulatory schemes, should random and rigorous post-hiring audits of firms heavily dependent on temporary workers be relied on to protect American workers?

These are obviously complicated and contentious issues requiring sustained inquiry and deliberation. Once again, the proposed Commission would be the ideal venue for such proceedings.

# An Independent Standing Commission on Immigration

A



The third option is the status quo, which combines rigid and unyielding permanent admissions categories with a temporary worker system that is overly responsive to narrow interests and largely obscured from public scrutiny.

Given these alternatives, we believe that a Standing Commission on Immigration would help foster the kind of open and deliberative process that our immigration policy badly needs. This does not mean that this or any process involving immigration will be easy. But we believe that the Commission would begin the necessary balancing of the economic opportunities presented by a globalizing world against the enduring needs of our political community.

# Assimilation and Integration

suring equal treatment under the law and opportunities for civic participation.

This bargain—a warm and helpful welcome balanced by immigrants’ progress toward the goal of citizenship and commitment to America’s success—presents opportunities for confidence-building measures. For instance, immigrants benefit from knowing the “rules of the game” and the mutual trust that comes from observing them; Americans are reassured by immigrant efforts and commitments to joining the political community.

## Roles and Responsibilities

To mitigate impacts on states and localities, enhance social cohesion, and ensure the success of new Americans, we recommend building an infrastructure that links federal, state, and local authorities with key pillars of civil society such as businesses, labor unions, community organizations, and faith-based programs.

The need for more focused and better coordinated integration strategies has never been greater, especially in jurisdictions that are new immigrant destinations. Even in established settlement areas, many of the institutions that promoted assimilation and integration in the past—unions, manufacturing firms, urban schools, and local party organizations—have weakened in this regard.

To address these challenges, some state and local governments already have begun to devise new and creative approaches to fostering assimilation and integration. All such efforts should be linked in a network promoted by a new federal Office for New Americans (ONA), located within the Executive Office of the President. ONA would



## Schools and Communities

Immigrants should be expected to take responsibility for their children's education and to utilize and support their local schools. In turn, host communities should set high expectations for all students, and public policy should focus on schools as hubs of parental and community engagement and centers for civic education.

Integration requires concerted, deliberate efforts to invite immigrants to become part of this nation—and for them to take on the rights and responsibilities of active citizenship. American public schools once consciously sought to do this. Today, these institutions may be weakened and over-burdened, but they are often still the most powerful anchors in fast-changing local communities. As mediating institutions, schools are often the primary arena for immigrant children to learn about the expectations placed on them to obey the law, to observe social norms, and to develop the capacity to engage in the civic arena. They also serve as critical venues for the civic and political education of parents and, in some cases, as springboards for their wider public engagement.

More effective efforts to retain immigrant youth through high school graduation, encouraging their going on to higher education, and greater emphasis on their civic engagement set high expectations for immigrants and their schools. Meeting these requires significant outreach on the part of schools and communities, particularly in establishing tighter links with parents. For instance, schools offering early childhood education programs that involve parents, build on their child-rearing skills, and encourage their learning English not only lay the foundation for the long-term educational success of their children, but also

part in mainstream civic and political events and engage more in the life of their broader communities. In doing so, immigrants demonstrate their commitment to their new status as full and responsible U.S. citizens.

Opinion leaders and major institutions should send strong signals that learning English is vital to immigrants. Amidst continuing controversies over bilingual education, this basic fact is often obscured. ONA could take a leadership role in promoting innovative language-learning curricula, including those that take full advantage of the latest communications technologies. It could highlight the ways in which flexibility in federal support for different approaches to teaching English can work in tandem with policies that make funding contingent on educational outcomes. And ONA could emphasize that adult ESL (English as a Second Language) programs also require significant attention and support.

With regard to citizenship, a recently revised naturalization test has placed greater emphasis on encouraging applicants to learn the fundamental tenets of American democracy as well as the rights and responsibilities of citizenship. Immigrants are thereby being encouraged to make a more considered commitment to their new identity. ONA's work with the voluntary sector could make sure that preparation for this test would be a more meaningful process, helping applicants for citizenship succeed as full participants in the American experiment.

# Mexico and Regional Engagement

**A**merica's 2,000-mile border with Mexico has al-



# Bringing It All Together: Forecasting Numerical Change

**R**evised public trust and sound public policy require clarity about how our recommendations would affect new admissions and overall immigration numbers. Estimating the medium- and long-term consequences of changes in immigration policy is a notoriously difficult task. Such estimates inevitably rely on uncertain assumptions and complex interactions among many moving parts. We have sought to avoid projecting a false sense of precision, while at the same time establishing parameters to guide the national debate that we hope to stimulate about immigration policy priorities and trade-offs.

Currently, the United States annually admits an average of 1.1 million immigrants as legal permanent residents. We propose to hold this number constant, while altering the mix of permanent residents admitted with an additional 150,000 skilled immigrants (including spouses and children) each year. We propose “paying for” this increase by eliminating the Diversity Visa Program and by limiting all family-sponsored preferences to nuclear family members, thereby eliminating an annual average of 160,000 admittances.

If our proposals were enacted into law, these new figures would reset the bar until Congress responded to the first set of recommendations issued by the proposed Standing Commission on Immigration. By holding the total number constant, we seek to highlight the importance of anticipating unpredictable increases in future flows so that the system is not overwhelmed. An example would be the sudden need to respond to urgent requests for refugee or asylum admissions. Our approach also recognizes the importance of volatile

210,000 individuals. The second is extremely difficult to estimate, but we calculate that it could be as many as 3.1 million. Our legalization proposal therefore implies that over the course of several years, the number becoming permanent residents would be 9.3 million [6.0 + .2 + 3.1].

Again, in light of our experience with legalization under IRCA, we assume that despite our best efforts, some significant, though indeterminate, number of fraudulent applications would be approved. A conservative guesstimate would be an additional 1 million individuals. Family members joining them from outside the United States could represent an additional 500,000, bringing this total to 1.5 million. This brings the overall total to 10.8 million [9.3 + 1.5].

Of course, when these nearly 11 million individuals eventually become citizens, they would be able to sponsor eligible family members not yet residing here. To be thorough, we should account for this figure, but again, it is difficult to estimate. Based on recent patterns, less than half of those who became LPRs would not become citizens. Under our proposal, the only additional family members that those who did naturalize would likely bring in would be their parents, at least some of whom would at that point be elderly and therefore unwilling to move to the United States. Under these assumptions, we offer a guesstimate of 1 million additional newcomers arriving here as parents of naturalized individuals. That would bring the cumulative, long-range impact of our legalization proposal to 12 million people [11 + 1].

Offsetting this number, our coordinated enforcement-legalization program would reduce not only the existing number of illegal immigrants, but also the continuous influx of new unauthorized immigrants. Earlier this decade, the net number of undocumented individuals settling in the United States annually peaked at more than 500,000. Current estimates put it around 300,000. But as the economy improves, that number will move back up—particularly if we do not act now on key enforcement policies. With our coordinated enforcement-legalization program in place, if it were 80 percent effective, we would see between 2.4 and 4 million fewer undocumented immigrants settling here over the ensuing decade.

# Conclusion

Immigration is a daunting issue even in normal times. And these are hardly normal times. The recent financial and economic crisis has exacerbated previously high levels of distrust between Americans and their leaders. Immigration policy has both contributed to that distrust and suffered from it.

Confounding the task facing policy-makers is the way immigration pervades so many aspects of American society and implicates so many other policy areas, including labor markets, education, and health care. The hard policy questions here are consequently even harder to address. For the same reason, it is all the more critical that we do so.

The members of the Brookings-Duke Immigration Policy Roundtable focused on a few critical parts of this hellishly complicated policy domain. And while the task we set for ourselves has been demanding, even more arduous is the task facing policy-makers and elected officials if they are to craft an equitable and prudent set of immigration policies. We would emphasize that the devil here is truly in the details. Implementation is everything, and much will depend on the right combination of policy judgment and good faith.

The Roundtable's task was to examine our own substantial differences in a deliberative manner and then agree on a core set of policy proposals. These were not easily arrived at, yet they take an important step toward breaking the deadlock on immigration reform. We believe that our efforts demonstrate that it is possible to talk across that deadlock and arrive at meaningful policy recommendations.

To build on these recomme( )75(o)Fh(o)F(o)23(n(3( )75(o)2s(s)33(e)2a( )23(e( )





# Additional Statements

I support the overall package of proposals that has emerged from the Roundtable's deliberations. But I cannot endorse the proposed legalization program.

While I sympathize with my colleagues' desire to alleviate the burdens on illegal immigrants, I also believe that their proposal would simply encourage future waves of immigrants to come here illegally with the expectation of legalization and eventual citizenship. Of still greater concern, my colleagues' proposal pays insufficient attention to the frustration and anger that a large segment of the American public feels about illegal immigration. To be sure, that anger is often intemperate and misdirected, but it is not entirely without justification. In any case, such sentiment is a political reality that must be reckoned with.

At the same time, those most attuned to the public's outrage over this issue are prone to advancing proposals that may be emotionally satisfying, but whose harshness ensures they are unlikely to be implemented in a way that seriously addresses the problem.

My response to this dilemma is a program that would offer generous and straightforward terms of legalization to most illegal immigrants—

I suggest the following additional points as worthy of readers' consideration of this report.

First, we should acknowledge that an independent Standing Commission on Immigration offers an attractive target for the active and heavily-funded interest groups that have surrounded U.S. immigration debates on all sides. Consider the following thought experiment: how much would it be worth to such an interest group, already committing millions of lobbying dollars each year, to ensure that one of its reliable supporters is appointed to this Commission? How much to "capture" this Commission by arranging for three or four such appointments? Obviously the credibility and utility of such a Standing Commission would depend entirely upon the extent to which its Members are selected to serve the public interest rather than as "representatives" of contesting interest groups.

Second, when it has been suggested that Mexico, as a friendly neighbor and NAFTA partner, has an obligation to cooperate in regulating and deterring illegal migration across its northern border, one common response is that this would be in violation of the Mexican Constitution, which guarantees Mexicans the right to depart Mexico. In

Although I support the other recommendations of this thoughtful and illuminating report, I must dissent from the group's recommendation of amnesty for many millions of people who either slipped across our permeable southern border or entered on a temporary visa and chose to remain after it expired.

No one can estimate the exact numbers who will qualify if this proposal becomes law, but the total will surely exceed a staggering 10 million, about as many as the total number of legal immigrants who have entered the country in the past decade!

I am not persuaded that these people have a strong moral claim to become full members of the body politic simply because they survived here for a few years without having been apprehended and deported. Their claim, indeed, seems much weaker than that of millions of prospective immigrants elsewhere who have abided by our laws and patiently waited their place in the line for legal admissions.

Nor am I convinced that another amnesty program will cut the illegal immigrant population in the long run. We were assured, after all, that the one approved in 1986 would accomplish that. Two decades later, the pool of illegal residents was much larger than ever before.

The enforcement tools proposed in the report are sharper than those of 1986. Whether they will in fact be used vigorously, though, depends upon the shifting political winds. And this legalization program sends migrants who are tempted to jump the queue the message that in time there will be another amnesty, and another, and another.

– Stephan Thernstrom



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