



## Mean-Spirited Features of U.S. Immigration Policy

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Debate on immigration legislation is taking place in the U.S. Congress as this essay is being written. The outcome is uncertain, but one gets the impression that President George W. Bush wants legislation to be enacted this year because it would be a manifestation of his ability to work with the Democratic-controlled legislature—perhaps the only collaboration on a significant issue. Nevertheless, although the president sent talking points to Congress, he has never provided a legislative proposal. This permits him to bob and weave as the sentiment in his own party unfolds—and just about all the moves he has taken recently are to the right and increasingly tough on undocumented immigrants. There are so many punitive points in the White House talking points and in subsequent under-the-table concessions to the far right in his own party that perhaps the best outcome is to leave bad enough alone for now lest we make things worse.

My purpose here is not to analyze all the elements of possible immigration legislation, but rather to focus on some mean-spirited aspects that have become part of the discussion. Many of these are based on the meaning of the word “amnesty.” Most Republican members of Congress oppose amnesty; President Bush, taking his cue from the position of his fellow party members, is against granting amnesty. He publicly stated his opposition to amnesty in the joint press conference with President Felipe Calderón on March 14 during his visit to Mérida, Mexico. President Bush believes it is amnesty if unauthorized immigrants in the United States are permitted to stay without “earning” a pardon after violating U.S. law. The administration, therefore, has focused extensively on the actions these clandestine immigrants must take, and on the punishment that should be inflicted on them, in order to earn amnesty. For many of his conservative colleagues, “earned amnesty” is an oxymoron; they consider any pardon to be amnesty. For them, therefore, words like “unauthorized,” “clandestine,” and “undocumented” obfuscate the situation; clarity requires calling them “illegal” immigrants who should be deported.

Some of the punitive aspects of dealing with undocumented immigrants put forward by the White House are the following. Those now here can register and make known their presence, and if they meet a number of reasonable prerequisites (have a job, committed no serious crime, learned English before the

first renewal of their temporary visa), they may obtain a three-year temporary visa on payment of a \$2,000 fine, plus a \$1,500 processing fee each time this licensure is renewed. Those who wish to seek legal permanent residence must pay a \$10,000 fine (\$2,000 when applying and \$8,000 when approved). Heads of household must return to their home countries and use the normal U.S. consular facilities to apply for permanent residence visas. Under these procedures, it would take a minimum of 13 years to become a U.S. citizen—but it could easily take double this time because of the backlog in processing permanent residence documents, or green cards. There is no assurance that green cards will be granted, regardless of the wait. If it took 15 years, the minimum cost to current undocumented immigrants would be \$24,000 in fees and fines. Insistence that those seeking regularization must return home (touchback, as it is called) and not be able to change visa status from the United States is included as punishment for the initial transgression of entering without appropriate documents. There are so many objectionable features that it is unlikely that many unauthorized immigrants now here will come forward to start the legalization process.

The *New York Times* (April 30, 2007) editorialized that many presidential candidates—the *Times* cited John McCain, Sam Brownback, Mitt Romney, and Rudolph Giuliani—are practicing “fakery [that] is hard to watch” as they switch away from earlier positions and cater to conservative primary voters by attacking amnesty. The central contention of the amnesty opponents is that there should be no reward for those who violate U.S. law. Yet, these critics of amnesty are being selective in how they apply this principle. U.S. employers who knowingly hired undocumented workers also violated the law enacted in the Immigration Reform and Control Act of 1986. Their deniability defense is in the word “knowingly.”

Employers lobbied hard in the IRCA debate to prevent having an identity document that was not easily forged, and they succeeded. Instead, proof that a person was properly in the United States under IRCA fell back on such documents as social security cards and drivers’ permits—and wholesale forgeries followed, as knowledgeable immigration experts predicted would happen. In recent years, meatpacking plants were set up in areas in the Midwest where there were few

workers—with the expectation that undocumented workers would come.

Employer groups have long lobbied to tailor practices to facilitate the hiring of undocumented workers. The Texas Proviso, signed into law by President Harry S. Truman in 1952, specified that hiring an unauthorized worker should not be interpreted as “harboring”; harboring was illegal. The deal in IRCA granted amnesty to many undocumented workers and, in order to limit future unauthorized entry into the United States, abolished the Texas Proviso and instituted penalties on employers who knowingly hired undocumented workers. The second part of the law was rarely enforced, nor was there any serious attempt to devise a reasonably foolproof way to identify which workers were legally in the United States—at least, until now, when the number of undocumented workers has mounted to 12 million and there is a clamor to do something to stop future unauthorized entries. As for enforcement, if inspectors from the Department of Homeland Security want to enter a business or agricultural establishment to search for and speak to unauthorized workers, they must first obtain a warrant. To obtain this, the government must show probable cause, and this involves costs and qualified investigative personnel. Homeland Security can look at the records in the front office without a warrant but not take the crucial step of speaking to workers. Department of Labor inspectors, whose job it is to enforce working conditions, are permitted to enter workplaces without a warrant.

Those legislators who support deportation of undocumented workers the government can get its hands on have now discovered another problem they may not have anticipated. There are about 3.1 million U.S.-born children of the 12 million unauthorized immigrants currently living in the United States. The unauthorized immigrant is usually the family breadwinner, and if he or she is deported, there is no real answer for the care of the citizen children. This problem already exists, and Homeland Security has found it necessary to set up sanctuaries for the children of breadwinners deported following recent raids of business and agricultural establishments. We may, in effect, be deporting U.S. citizens to countries where they have never lived. This situation has already led to proposals to change the provision in the constitution that grants citizenship to all persons born in the United States. This would be a major change after almost 220 years of U.S. practice.

There is much that is unhealthy in the punitive approach to dealing with unauthorized immigrants now living in the United States. One impetus for Mexican migration came from the United States under the *bracero* program to bring Mexican agricultural workers to fill in for U.S. nationals away during World War II. The *bracero* program lasted until 1964, but U.S. employers continued to lure Mexican workers using the attraction of higher wages—today these workers can earn 10 times as much as they can at home. Over time, this movement of workers led to many kinship relations between Mexican

sending communities and U.S. localities where the workers came and raised their families. Similar networks grew with other sending nations, especially from relatively nearby locations in Central America and the Caribbean. As long as these opportunities exist—if there are insufficient decent jobs in sending areas and welcoming employers in the United States willing to pay much more than these workers can earn at home—it is hard to stop the migration. The numbers are now substantial because, in part, little was done by the United States to stop the inflow. If anything, the U.S. government implicitly encouraged this worker inflow.

Now that U.S. sentiment has changed, the opprobrium and the accompanying arrests and actual and potential deportations are falling on the workers. The argument that they violated U.S. law is correct, but the migrants are hardworking people trying to earn a decent living and care for their families in the United States and in the sending countries. The U.S. government is only now beginning to apply the law that has existed since 1986, but the punishment of employers is far less stringent than the proposed punishment of the workers. The opposition to amnesty for undocumented workers while giving a largely free pass to employers who also violated the law is based on class distinction and does not show the United States as a country that believes in equal justice before the law.

In the process, the United States is changing long-held practices. A fence is being built to separate us from our neighbor, destroying a long-held tenet in which the United States took much pride, namely, that North America was a peaceful area in which neither fences separating neighbors nor military personnel were necessary. We now have both along the Mexican border. There is a threat of wholesale deportation of people who have made their homes in the United States for many years and who have children who are U.S. citizens. There is the proposal to end birthright citizenship.

We wish to regain control over who enters the United States, and that is a reasonable proposition for a sovereign nation. But in the process, it is hard to see the rationale for punishing people who reacted to the incentives placed before them by U.S. employers with the acquiescence of the U.S. government and much of civil society. It is a manifestation of how the United States flaunts its dominance in relations with Mexico. The discriminatory punishment of people who migrated to improve their positions in life is, at its core, un-American.

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