

# Queueless On Immigration

by *Shikha Dalmia*

For two decades, immigration bashers have stymied any attempt to regularize the status of illegal aliens in this country by employing one, single trope against them: they are queue-jumpers who illegally crossed the border ahead of those patiently waiting their turn.

But the trope is a fallacy based on a complete misstatement of U.S. immigration policy. There is no such line - a legal pathway to citizenship for unskilled workers. Still, this unfair accusation has transformed "amnesty" into a dirty word. Equally bad, it has made a guest worker program for future unskilled workers contingent on first creating a Berlin Wall on the Mexican border.

Unlike Ronald Reagan, who unabashedly adopted the term to push for permanent residency for the 2.7 million illegally in the country in the mid-1980s, every immigration advocate today is disavowing it. President Bush vociferously denies that his plan for comprehensive immigration reform has any amnesty component to it, pointing to the hefty fines and fees he plans to extract from illegals in exchange for not deporting them.

Meanwhile, Arizona's Republican Congressman Jeff Flake, usually a sensible immigration advocate, insists that STRIVE, his immigration reform bill, won't hand illegals a short-cut to a green card as Reagan did. Rather, it will require them all to return home - touch-back - and re-enter legally before becoming eligible for one. But most disappointing of all is Rudy Giuliani's volte-face: He championed the cause of all immigrants while mayor of New York, yet is now issuing high-pitched condemnations of amnesty and illegals in a pathetic attempt to court GOP nativists for his presidential bid.

But amnesty has a long and honorable history. It was first used in the Civil War when the victorious Unionists employed it to give Confederate forces a pass from prosecution. In the 1980s, it was a popular tool of state governments to encourage tax compliance. Governments elsewhere have used amnesty to prod their citizens to turn in their guns.

Indeed, the need for amnesty is often a sign of the inefficacy, even injustice, of a law. It suggests that enforcing the law might prove more costly - monetarily and socially - than temporarily suspending it. The biggest reason, however, why reasonable people don't find anything inherently wrong with amnesty is this: It restores the legal standing of its intended beneficiaries without producing any palpable harm to others.

This last rationale is what the queue-jumping trope powerfully undercuts by suggesting that amnesty for illegals means depriving someone else, more worthy, of entry into the country. Worse, it implies that undocumented workers actually have a choice of taking the legal road just like those waiting in line, but choose to willfully ignore it.

But these suggestions are patently false.

Current immigration law distinguishes between skilled and "unskilled" workers -- a

distinction that says more about the economic ignorance of immigration bureaucrats and less about either's economic necessity. The process for acquiring permanent residency -- or a green card -- for skilled workers is a costly, bureaucratic nightmare. For most scientists, engineers and programmers it begins by obtaining a temporary work visa called an H1-B. This in itself is a nerve-racking exercise given that only 65,000 visas are issued annually and there are twice as many applicants. For the last four years, these visas have run out in the first few months of the year.

Once they get this visa, they can legally work in this country while applying for their green card. However, according to a 2006 study by the National Foundation for Policy Analysis, the wait - or queue - for green cards for skilled workers is at least five years. After that, it takes another five years to become a citizen. But though the immigration process for skilled workers is long, arduous and fraught with failure -- at least there is one.

Not so for unskilled workers.

The closest equivalent to an H-1B visa for non-agricultural unskilled workers - the bulk of the illegal population -- is an H-2B visa. These visas have just as tight a cap as H-1Bs, but they have many additional constraints. They are meant only for seasonal jobs and are self-liquidating. This means that once a worker has installed a piece of machinery or assisted a landscape company get through its peak season, the visa automatically expires.

Unskilled workers wishing for more permanent employment in, say, Marriott's house-cleaning department have virtually no visa options to enter the country legally. Furthermore, unlike skilled workers who can apply for a green card while on an H-1B, H-2B visa holders are effectively barred from doing so. In fact, they risk losing their H-2B - or, worse, not even getting one - if they signal an intention of applying for a green card.

In essence, there is no queue for unskilled workers to stand in. Amnesty for them therefore has zero bearing on the wait time of skilled workers. And without amnesty, there is no way currently for them to become permanent residents - much less citizens. Creating such a way for future unskilled workers through a guest-worker program ought to be the top goal of any sensible immigration reformer.

The so-called problem of illegal immigration is purely the creation of America's restrictive immigration laws. But the queue-jumping trope has allowed immigration opponents to seize the moral high-ground and make the enforcement of these restrictive policies the issue, rather than their reform.

They managed to kill Bush's comprehensive immigration reform proposal that would have created a guest worker program while simultaneously ramping up border enforcement. Indeed, the most promising immigration compromise now wending its way through the Senate contains a "trigger" mechanism that would delay the implementation of a guest worker program till: effective sanctions against employers using illegals are put in place; border patrolling is bolstered; and all foreign entrants have a biometric ID.

These conditions are so onerous that this "trigger" will likely never go off. This is not immigration reform; this is immigration status-quo forever entrenched into law.

Immigration reformers need to reject this faux compromise. And before they approach the issue again, they need to first recapture the high-ground by exposing the myth of the queue - and forthrightly embracing amnesty.

#### **About The Author**

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