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Illegal Immigration and Immigration Reform: Protecting the Employment Rights of the American Labor Force (the Native Born and Foreign Born) who are Eligible to be Employed

Abstract
[Excerpt] Ever since the latter half of the 19th Century when the United States began to use its lega l system as a means to regulate both the size and the composition of the flow of foreign-born persons into its population and labor force, policymakers have had to confront the issue of what to do about those who defy the ensuing limitations, restrictions, and exclusions. As a consequence, the subject of illegal immigration has made frequent appearances on the nation's political reform agenda.

For while the United States claims to be a "a nation of immigrants," it also boasts that it is a "nation of laws" which presumably includes the realm of immigration policy as well. As President Barack Obama eloquently stated during a "town hall meeting" in 2009 when asked about the issue of illegal immigration and immigration reform: "Laws must be binding; rules must be followed; words must mean something."

Slogans and rhetoric, however, are not policies. They are not substitutes for courses for action. Illegal immigration disproportionately and adversely affects the economic wellbeing of the most vulnerable and needy segment of nation's labor force: its low skilled workers (both those who are native-born and foreign-born). Indirectly, it corrodes the efficacy of the already weak system of employment standards the nation has for the prot ection of its most precious national resource: its labor force. Directly, it breeds cynicism by legally employable workers that their government does not care about the unfairness of the conditions that they must confront when they have to compete with illegal immigrants for jobs; it causes hardship by depressing wages and reducing employment opportunities for legally employable American workers; and, lastly, it fosters circumstances that tolerate worker exploitation of the illegal immigrants themselves in the labor market.

Keywords
labor market, immigration, public policy, reform, employment

Comments

Suggested Citation
Briggs, Jr., V. M. (2010, March). Illegal immigration and immigration reform: Protecting the employment rights of the American labor force (the native born and foreign born) who are eligible to be employed [Electronic version]. Paper presented at *Undocumented immigrants in the workplace: Exploring the rights and reforms of America's shadow labor force*. University of Connecticut School of Law. Hartford, CT. http://digitalcommons.ilr.cornell.edu/conference/8/

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Symposium
Connecticut Public Interest Law Journal
Hartford, Conn.
March 26, 2010

Illegal Immigration and Immigration Reform: Protecting the Employment Rights of the American Labor Force (the Native Born and Foreign Born) Who Are Eligible to be Employed

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Ever since the latter half of the 19th Century when the United States began to use its legal system as a means to regulate both the size and the composition of the flow of foreign-born persons into its population and labor force, policymakers have had to confront the issue of what to do about those who defy the ensuing limitations, restrictions, and exclusions [Briggs, 2003, Chaps. 5-12]. As a consequence, the subject of illegal immigration has made frequent appearances on the nation's political reform agenda.

For while the United States claims to be a "a nation of immigrants," it also boasts that it is a "nation of laws" which presumably includes the realm of immigration policy as well. As President Barack Obama eloquently stated during a "town hall meeting" in 2009 when asked about the issue of illegal immigration and immigration reform: "Laws must be binding; rules must be followed; words must mean something."

Slogans and rhetoric, however, are not policies. They are not substitutes for courses for action. Illegal immigration disproportionately and adversely affects the economic well-being of the most vulnerable and needy segment of nation's labor force: its low skilled workers (both those who are native-born and foreign-born). Indirectly, it corrodes the efficacy of the already weak system of employment standards the nation has for the protection of its most precious national resource: its labor force. Directly, it breeds cynicism by legally employable workers that their government does not care about the unfairness of the conditions that they must confront when they have to compete with illegal immigrants for jobs; it causes hardship by depressing wages and reducing employment opportunities for legally employable American workers; and, lastly, it fosters circumstances that tolerate worker exploitation of the illegal immigrants themselves. in the labor market.

It is past time for the enforcement of the nation's immigration laws to be me made a national priority by policy makers. For until it does so, the nation's prevailing immigration policy will continue to lack "credibility" [U.S. Commission on Immigration Policy, 1997, p. xvi].

Immigration Policy and Labor Supply

Although seldom acknowledged as doing so, immigration policy serves as the nation's most basic labor law. It establishes who is legally eligible to be member of America's labor force. They are as follows: all persons who are citizens either by birth (i.e., native-born) or by registration (for children born abroad but of citizen parents); all foreign-born persons who have applied and been granted citizenship through legal naturalization; all non-citizens who have been granted permanent resident status; all non-citizens who have been granted refugee or asylum status and, in some cases, those whose status is pending; all non-citizens who belong to groups who have been given temporary protected status for limited periods of time due to unsettled conditions in their homelands; and those non-citizens who have been granted non-immigrant status that permits work for limited and temporary periods in specified circumstances.

Many other non-citizens are permitted legally to be in the country for limited and temporary time periods as non-immigrants but most are not permitted to work (e.g., those here as visitors or for business purposes) and, accordingly, they are not eligible to be in the legal labor force.

Then there is the residual: those non-citizens living and/or working in the United States without permission. They are considered to be illegal immigrants. Some of these non-citizens entered the country with non-immigrant visas but subsequently over stayed the time limits of their visas and/or violated the restrictions that prohibit any employment at all or the restrictions were placed on the types of temporary jobs they can hold. They are known popularly as "visa abusers" and, as such they are considered to be illegal immigrants even though they originally entered the country legal documents. Most illegal immigrants, (perhaps as much as 60 percent of the total), however, are non-citizens who entered the country surreptitiously without documents. They are known as EWIs (i.e., those who "entered without inspection"). Collectively, these two groups comprise the illegal immigrant population. Since November 6, 1986 when President Ronald Reagan signed the Immigration Reform and Control Act into law, it has been illegal for such persons to seek employment or to be hired by employers in the United States. In other words, such persons are ineligible to be in the nation's legal labor force.

But laws do not enforce themselves. Thus, the failure of successive administrations and congresses to take seriously the need to actually monitor worksites; to prosecute offenders; to fund border deterrence measures; and to fill legal loopholes in the legislation has allowed illegal immigration to continue and to flourish. As illegal immigrants have continued to come and to seek employment, they have joined the nation's labor force despite the fact that they are ineligible to do so. In the process, they have swollen the size of the labor supply in those segments of the labor market where they have clustered. By definition, therefore, their presence has employment and wage implications that would not be the case if the nation's immigration laws were enforced [[Fogel, 1978, Chapters VI and VIII].

Illegal Immigrants and the Labor Force

In 2009 the Bureau of Labor Statistics of the U.S. Department of Labor reported that the civilian labor force of the United States totaled 153 million workers. Of this number, the immigrant (i.e., foreign-born) labor force numbered 23.3 million workers (or 15 percent of the total).

Of the estimated 11.9 million illegal immigrants in the United States in 2009, 8.3 million illegal immigrants are believed to be in the civilian labor force [Passel and Cohn, 2009, p. iii]. This means that illegal immigrants account for about 5.4 percent of the civilian labor force and 35.6 percent of the total foreign-born labor force. Moreover, these numbers are acknowledged to be conservative with the "real" numbers and percentages being no doubt higher due to statistical undercount.

It should be noted that the current stock of illegal immigrants and the on-going annual flow of about 300,000 to 500,000 persons has largely accumulated despite the passage of seven different amnesties (i.e., legalizations of status) for 6 million former illegal immigrants that have taken place since 1986. As most of the beneficiaries of these past adjustment actions are probably still alive and active in the labor market, it is not too much of a stretch of the imagination to conclude that over half of the entire immigrant population and labor force of the United States as of 2009 gained entry to the country illegally.

By any measure, the scale of the participation of illegal immigrants in the labor force is substantial. Their continuing presence represents a colossal failure of public policy.

The Labor Market Presence of Illegal Immigrants

The impact of illegal immigration on the U.S. labor force is more than simply that they swell the size of the civilian labor force. Rather, it is the fact that the illegal immigrant labor force tends to be concentrated in certain sectors; it is not randomly distributed.

The Pew Hispanic Trust (using U.S. Census data) in 2009 found that eight states account for 68% of the total illegal immigrant population; 94 percent of the illegal immigrant population live in urban metropolitan areas (compared to 80 percent of the native born); and that 74 percent of the adult (ages 25-64) illegal immigrant population have only a high school or less level of education (with 29 percent of these same adults having less than a 9th grade level of educational attainment) [Passell and Cohn, pp. 1, 3 and 11 respectively].

Thus, it comes as no surprise that labor market research finds that the illegal immigrant work force is highly concentrated in the low-skilled occupations of farming, construction, grounds keeping, maintenance, and food preparation sectors of the economy and that their share of many of these low-skilled jobs is "increasing" [Passell and Cohn, pp. iii and 12-16].

The Low-Skilled Labor Force Carries the Burden of Accommodation

Although it is seldom discussed, the United States has a considerable number of low-skilled workers. As of January 2010, there were 48.1 million adult workers (those over 25 years old) in the civilian labor force who had only a high school diploma or less (or 31.6 percent of the civilian labor force) [U.S. Department of Labor, January, 2010, Table A-17]. The unemployment rate for this low skilled segment of the adult labor force was 13.6 percent – the highest rate for any educational attainment grouping of the labor force at a time when the national rate of civilian unemployment was 9.7 percent.

Adult members of minority groups are disproportionately represented in this low-skilled segment of the labor force. This low-skilled sector accounted for 35.9 percent of the entire black civilian labor force in February 2010; for Latinos, the percentage was 52.2 percent. As would be expected, the unemployment rate at that time for low-skilled adult black workers was 18.9 percent while for adult Hispanic workers, it was14.1 percent. Such high unemployment rates are clear indicators that this large sector of the nation's labor market has a considerable surplus of job seekers. The supply of low-skilled adult workers far exceeds the prevailing demand for their labor.

It is, therefore, the remaining 40 million low –skilled adult workers of the nation's labor force who are legally eligible to work who bear the burden of accommodating the influx of the 8.3 million illegal immigrant workers who are not.

The late Senator Daniel Patrick Moynihan (D-NY) once famously said: "People in a free society are entitled to their opinions; they are not entitled to their facts." The factual economic consequences of the presence of such a large number of illegal immigrant workers in the low-skilled adult labor force are that: (1) the size of the low-skilled labor force is substantially enlarged from what it would otherwise be (which modulates any pressures for wages to increase); (2) the already low wage rates for low-skilled workers tends to stagnate overtime which contributes to rising poverty levels (the level of poverty has increased every year so far of the 21st Century); and (3) rising poverty levels contribute to a widening disparity in the distribution of income within the nation (since 1976 average real income for the bottom 90 percent of the nation's households has increased by only 10 percent whereas that for the top l percent of the nation has increased by 239 percent [Aron-Dine, (2008), p.2]. These are not facts to be debated; they are issues to be dealt with.

Obviously, illegal immigration is not the only cause of these adverse economic trends; but it certainly is one of the big explanations. Illegal immigration is particularly adverse in its wage and employment effects for those low-skilled workers who are already the most economically worst-off in the nation's labor market. What is for sure is the obverse: if illegal immigration was flooding the higher-skilled segments of the labor market as it is doing now in the low-skilled sector, the problem would have been addressed and corrected decades ago

The Pathway for Real Immigration Reform

The obvious starting point for contemporary immigration reform efforts should be the recommendations set forth in the landmark report of the U.S. Commission on Immigration Reform (CIR) chaired by the late Barbara Jordan (and for whom the Commission dedicated its final Report) [U.S. Commission on Immigration Reform, 1997]. Its labor market findings were largely based on the research provided to it by a specially created committee of immigration experts set up under the auspices of the National Research Council of the National Academy of Sciences [National Research Council, 1997].

Focusing for present purposes only on its recommendations pertaining to illegal immigration (about which CIR was unanimous in all of its recommendations), CIR recommended the enactment of a "comprehensive strategy" based on enhanced border and visa management to prevent both illegal future entries and visa abuses by those already here; improved worksite enforcement of the ban on illegal immigrants working and on employers from hiring them; and the speedy removal of those illegal immigrants apprehended within the country [U.S. Commission, p.103].

The Commission made no mention of any need to adopt any amnesty or "pathway to citizenship" for those illegal immigrants already in the country since the nation's experiences in the past with such programs has demonstrated that they only serves to foster more illegal immigration. There is no ambiguity in the existing laws that clearly states that non-citizens who are ineligible to be employed and who violate the nation's immigration by seeking to work as well as the employers who are willing to hire them have no right to do so. Given the adverse impacts on wages, employment and working conditions that the presence of illegal immigrants impose on the nation's large low-skilled work force (both citizens and non-citizens) who are legitimately eligible to work, the policy necessity is to remove illegal immigrants from the workplace; not to legalize and perpetuate their presence.

In the years since CIR issued its reports, significant steps have been taken to improve border management. Increased fencing has been added where border areas were most vulnerable to unsupervised crossings. The size of the Border Patrol has been more than doubled and more technology has been added to monitor border crossings. Likewise, removals of apprehended illegal immigrants have also increased. In 2009, for example, 387,790 illegal immigrants were formally deported, a slight increase over the numbers for 2008. But emphasis has been placed on deportations of criminal aliens (which is not very controversial) rather than on those millions of illegal immigrant workers who violate employment bans.

The one recommendation of the Jordan Commission, however, that has been largely ignored (especially since the Obama Administration took office) has been worksite enforcement. Enforcement at the worksite, however, is vital to any serious strategy to protect American workers (both native born and foreign born who are eligible to work) from the unfair competition with illegal immigrants. Worksite enforcement rids the workplace of illegal immigrants and, in so doing, opens up jobs for those legally eligible to hold them. It also imposes civil penalties on those employers who hire them and it

eliminates the grossly unfair paradox whereby employers who comply with the nation's hiring laws are penalized by having to try to compete with those employers who ignore the ban on hiring illegal immigrants and gain a competitive advantage by doing so.

Furthermore, worksite enforcement not only serves to remove illegal immigrants from jobs but it is also used as an occasion to simultaneously enforce the violation of a wide range of other important worker protections -- like bans on child labor; failure to pay minimum wage rates, non-compliance with overtime pay requirements, and the existence health and safety violations -- that typically characterize worksites where illegal immigrants are employed and exploited. Most of these violations would otherwise never be discovered since enforcement of these protective provisions depends largely on self-reporting to authorities by workers themselves before they can be remedied – something illegal immigrants may not conceive they are entitled to do or are reluctant to do for fear of having their illegal status revealed.

Worksite enforcement must be an active component of any serious effort to discourage the employment of illegal immigrants and reduce violations of other labor protection laws.

Final Comment

Speaking at the National Press Club in Washington, DC in 1979, Cesar Chavez -- President of the United Farm Workers union which at the time was fighting an uphill fight to organize agricultural workers because illegal immigrants were being widely employed as strikebreakers-- demanded that the federal government take seriously its duty to keep illegal immigrants out of the fields and out of the country. He boldly stated that if "my Mother was breaking the strike and if she were illegal, I'd ask the same thing" [Chavez, 1979, p.2 of Question and Answers]. The reason, he explained, is that picket lines and unions are about wage levels and employment opportunities for workers. Combating illegal immigration is about economic issues; "it's not a political game." "People are being hurt and being destroyed with the complicity of the federal government," he added.

His words are as prescient today as they were when first spoken over 30 years ago. Enforcing the nation's immigration laws is not a "political game." It is not about using immigration reform as a subject to placate the self-interests of various racial, ethnic or religious groups; or to be used as a "wedge issue" by politicians to pacify or to divide specific voting blocks; or to function as a rallying cry for demagogic street activists to push their private agendas. Ridding the labor market of illegal immigrant workers is about the economic well-being of the most needy workers in the nation's work force: those low-skilled workers (both native born and foreign born) who on a daily basis perform much of the most vital work this country requires for its strength and survival.

It is time to make the interests of the "lasts" in our society the "first" consideration when it comes to reforming a public policy that affects their welfare the most.

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