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Vernon M. Briggs

Cornell University, vmb2@cornell.edu

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Immigration Reform: The Key Issue is Enforcement

Abstract

[Excerpt] The hemorrhage of illegal immigrants has not only made a mockery of the nation's immigration laws; it has seriously undermined the public's confidence in their government's ability to secure its borders and control the nation's destiny.

Keywords

immigration, public policy, illegal immigration, labor law, legislation, labor market, labor supply

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Immigration Reform: The Key Issue is Enforcement

by Vernon M. Briggs, Jr.

Professor Emeritus, Industrial Labor Relations, Cornell University



Immigration reform is the domestic policy imperative of our time. The revival of the phenomenon of mass immigration from out of the nation's distant past was the accidental by-product of the passage of the Immigration Act of 1965. Immigration had been declining as a percentage of the population since 1914 and in absolute numbers since 1930. In 1965, only 4.4 percent of the population was foreign born — the lowest percentage in all of U.S. history and totaled 8.5 million people (the lowest absolute number since 1880). There was absolutely no intention in 1965 to increase the level of immigration. The post-World War "baby boom" was on the verge of pouring a tidal wave of new labor force entrants into the labor market in 1965 and would continue to do so for the next 16 years. The stated goal of the 1965 legislation was to rid the immigration system of the overtly discriminatory admission system that had been in effect since 1924. But as subsequent events were to reveal, this legislation let the "Genie out of the jug." Without warning, the societal

Photo: NASA/Science Photo Library
Aerial view of the US-Mexican border separating
El Paso, Texas and Ciudad Juarez, Chihuahua,
Mexico. The border is created by the Rio Grande.

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changing force of mass immigration was released on an unsuspecting American economy and its labor force. By 2005, the foreign-born population had soared to 35.5 million persons (or 12.1 percent of the population) and there were over 22 million workers in the labor force (or 14.7 percent of the labor force).

The Imperative Issue: Illegal Immigration

The underlying reform that must be addressed before any others is the issue of illegal immigration. It makes no sense to debate remedies for deficiencies and/or additions to the extant immigration system when mass violations of whatever is enacted are tolerated year after year. The accumulated stock of illegal immigrants in 2005 is believed to number between 11.5 to 12 million persons. The annual additional flow is estimated to be between 300,000 to 500,000 persons. Worse yet, these numbers exist despite the fact that over 6 million illegal immigrants have been allowed to legalize their status as the result

of seven amnesties granted by the federal government since 1986. The hemorrhage of illegal immigrants has not only made a mockery of the nation's immigration laws; it has seriously undermined the public's confidence in their government's ability to secure its borders and control the nation's destiny.

Despite the fact that the issue of illegal immigration had been identified soon after the Immigration Act of 1965 was passed, it took Congress another 21 years to confront the issue. It did so with the passage of the Immigration Reform and Control Act of 1986 (IRCA). This legislation made it illegal for an employer to hire a non-citizen unless that person had specific authorization to work (i.e., they were a permanent resident alien of the United States or they held a specific non-immigrant visa that permitted them to work under specific terms for a temporary time period). A scale of escalating civil penalties coupled with the potential of criminal penalties for serious repeat offenders was established.

IRCA also granted a general amnesty to most illegal immigrants living in the country since January 1, 1982 and an industry-specific amnesty to most illegal immigrants who had worked in the perishable-crop sector of the agricultural industry for at least 90 days between May 1, 1985 and May 1, 1986. These amnesties were deemed necessary because, prior to the passage of IRCA, our immigration policies were ambiguous as to their intentions relative to the working rights of illegal immigrants. While it was illegal for illegal immigrants to enter the country without inspection or to work in violation of the terms of an otherwise legal non-immigrant visa, it was not illegal for an employer to hire them. IRCA ended this legal hypocrisy with its new provisions regarding employer sanctions. They became effective the instant that President Ronald Reagan signed the legislation on November 6, 1986.

Experience quickly revealed, however, that IRCA had serious weaknesses. Without a reliable and verifiable worker identification system in place,



Photo: Geoeye/Science Photo Library
Aerial view of the Mall in Washington DC

fraudulent documents are easily obtained which meant that enforcement efforts can be—and are—widely circumvented. Vastly inadequate resources were provided to manage border entries and to patrol the vast border space between entry points. Internal

Rather, it is because illegal immigrants tend to be disproportionately concentrated in certain segments of the nation's labor market, their adverse employment impact is quite specific. The 2000 Census reported that 58 percent of the adult foreign-born population

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had only a high school diploma or less. Undoubtedly the educa-

enforcement away from the border and at worksites was and still is virtually non-existent. As a consequence, illegal immigrants continue both to enter surreptitiously or to overstay and violate the terms of legal visas. As a result, violations of the employer sanctions provisions of IRCA were—and still are—viewed as being “risk-free” actions by many employers. In 2004, only three employers nationwide paid criminal fines for violating the law. Perversely, those employers who seek to follow the law are placed at a distinct competitive disadvantage in their hiring decisions with those employers who flaunt the law.

tional attainment level of illegal immigrants is even worse—estimated to be over 80 percent who have only a high school education or less. Most illegal immigrants, therefore, are poorly educated, unskilled and typically speak little English. Of necessity, therefore, they seek employment in the low skilled occupations in a variety of industries. In the process, they artificially swell the labor supply in those occupations and industries and depress the wages of the low skilled American workers who also work in these sectors.

But the fundamental reason to rectify the shortcomings of IRCA are associated with the reasons why employer sanctions were deemed necessary in the first place: to protect the American worker (defined as being the native born workers; all foreign born persons who have become naturalized citizens; those non-citizen workers who are permanent resident aliens; and those foreign nationals who have

been granted specific non-immigrant visas that permit them to work for limited time periods in the country) from having to compete for jobs with persons who are legally not supposed to be in the country and absolutely not supposed to be in the labor force.

If permitted to compete for these jobs with American workers, the illegal immigrants will always win. This is because they will do anything to get the jobs—accept lower than prevailing wages; work longer hours; work under dangerous and hazardous conditions; and live in crowded and sub-standard housing. They will accept conditions as they are and are less likely to report violations of prevailing laws pertaining to work standards, anti-discrimina-

been granted specific non-immigrant visas that permit them to work for

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limited time periods in the country) from having to compete for jobs with persons who are legally not supposed to be in the country and absolutely not supposed to be in the labor force.

It is estimated that there are 7.2 million illegal immigrants in the labor force in 2005 (or about 4.9 percent of the nation's labor force). But it is not the total number *per se* that is the crucial concern.

tion and sexual harassment—even if they know these laws exist (which many do not). No American worker can successfully compete against them—nor should they—when the rules of the game are who will work the hardest, for the longest hours, and under the worst conditions.

As a consequence, the illegal immigrant worker becomes the “preferred worker” for employ-

ers. It is not that "American workers will not do certain jobs," it is that they will not do the jobs under the same terms that illegal immigrants often will — nor should they. As for the illegal immigrants, they willingly work under these adverse conditions, because their orbit of comparison is with the conditions of work in their homelands.

Literally, it does not matter how bad the working conditions are in the United States as they are invariably far better than the employment conditions where they come from.

Thus, illegal immigrants are usually willing to work in any job they can find. Low skilled American workers, on the other hand, know that low wages and bad working conditions are associated with jobs where employers typically consider individual workers as being dispensable. The work may be essential, but who does it is not important. As long as someone can be found to do it, there is no need to make the job attractive or to compete actively to get some one to do it. The availability of a pool of illegal immigrants who are more than willing to do fill these jobs means that wages do not have to be increased or do working conditions need to be improved. Moreover, employers have found illegal immigrants so attractive that they often use those they employ as a network to hire their relatives and friends when they need replace-

ments or additional employees. As a consequence, there are thousands of jobs in which employers will not hire American workers even if they would apply. They do not want them and, given the alternative of illegal immigrants, they do not need to recruit American workers. All of this is illegal, of course,

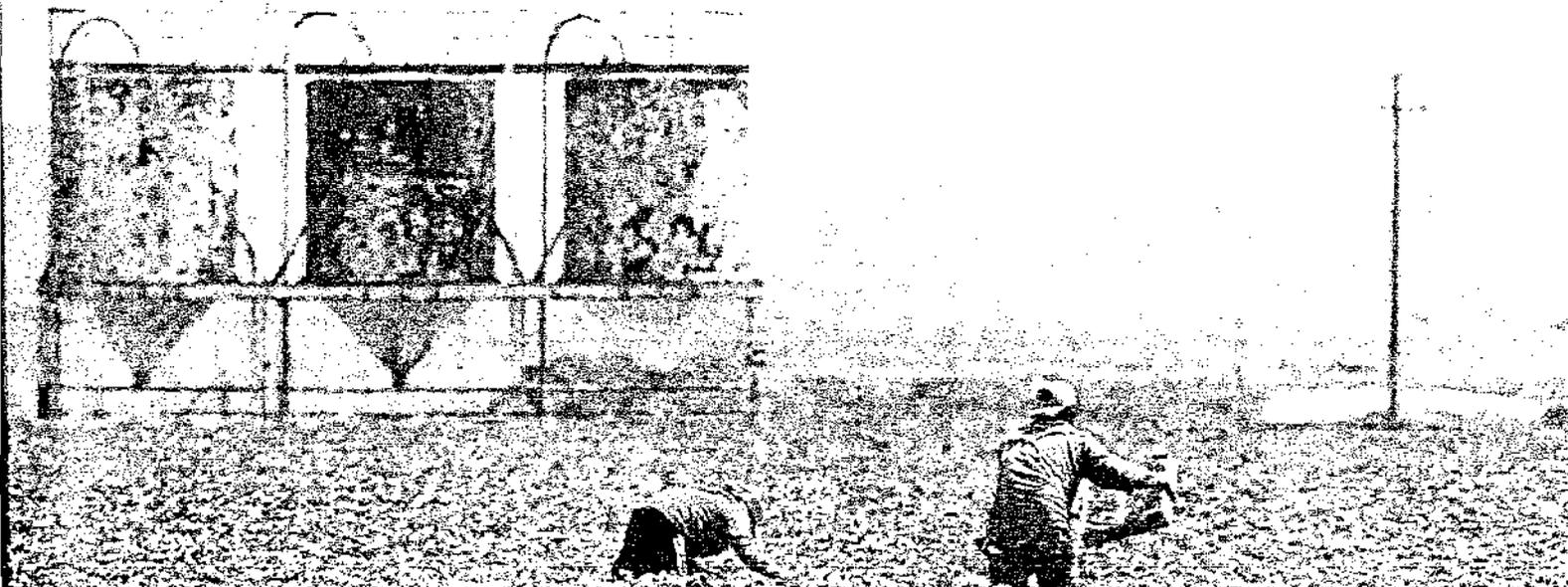
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but who is keeping the illegal immigrants out of the workplace?

In this context, it is important to realize that there are more than 34 million low wage workers in the U.S. labor force (i.e., those earning less than \$8.70 an hour — a wage that will about meet the minimum poverty

threshold for a family of four if employed for a year) who are in the low skilled sector of the labor market. Overwhelmingly, most of these workers are American workers. Also, as the number of illegal immigrant workers has soared since the year 2000, 3.2 million native born persons of working age who had only a high school diploma or less have dropped-out of the labor force. Presumably, they have found it more rewarding to seek public benefits or chosen to pursue illegal activities to support themselves. Unfortunately, it is the low skilled American workers who bear most of the burden of competing for the jobs on the lower skill rungs of the nation's economic job ladder with illegal immigrants.

Massive numbers of illegal immigrants such



as those now in the U.S. labor force — and the prospect that many more will continue to come until the magnet of finding jobs is turned-off — has opened wide the door for human exploitation. The literature is rampant with case studies and reports that document that the portion of the labor market where illegal immigrants work is infested with the use of extortion and brute force (by human smugglers), human slavery (workers bound to human smugglers until their fees are paid off), wage kickbacks (to employers of illegal immigrants as well as to labor

populace, but it also adversely affects the broader society itself. Hence, there is little reason to believe that other policy reforms can be beneficial as long as the integrity of the entire system is in question. There are three steps that must be taken: 1. The employment sanctions system must be made to work (e.g., a program to verify social security numbers must be made mandatory immediately and steps taken to establish a national counterfeit-proof worker identification card be undertaken and implemented as soon as possible; internal enforcement at the worksite to

- 1. The employment sanctions system must be made to work.**
- 2. Enforcement must become a reality.**
- 3. There must be no more amnesties for those illegally in the United States.**

validate that employees are in fact eligible to work must become a routine matter; fines for

contractors), child labor, sexual harassment, job accidents (especially by illegal immigrants who cannot read safety warnings or who lie about their past work experiences and are injured or killed in jobs that they really do not know how to do), and the spread of “sweat shop” manufacturing.

Thus, there is nothing romantic about the nation’s failure to enforce its immigration laws no matter how often or vocal pro-immigrant advocacy groups try to spin and to rationalize the issue. Indeed, the indifference paid by many of our national political leaders, the media, and many elite leaders of business, labor, religious, civil rights, and civil liberties groups to these exploitive conditions represents a decidedly seamy side of our democracy.

In addition to the adverse workplace impact of illegal immigration, there are other corrosive effects on the social fabric that are also directly linked to illegal immigration. Among these are: adult illiteracy, child poverty, school dropouts, unvaccinated children, violent street gangs, crime, and persons without health insurance to mention only some of the concerns that are reasons themselves to act.

The Needed Reforms

Illegal immigration is the primary issue that immigration reform must embrace. Not only is it a cause itself of significant harm to the economic well-being of the most needy segments of the American

violations of the employer sanctions system must be increased as must be the criminal penalties for repeat offenders). 2. Enforcement must become a reality (by both deed and publicity). The message must be made clear: illegal immigrants will not work in the United States — those apprehended will be deported and those who hire them will be prosecuted to the full extent of the law. More detention facilities, manpower, and resources must be devoted to enforcement. 3. There must be no more amnesties for those illegally in the United States. American workers are being harmed by the presence of persons in the labor force who are not supposed to be there; getting those who are now here out of the labor force is as important as keeping future illegal immigrants from entering it. Talk of amnesties only raises the hopes of those here that they can stay and of others outside the country to keep coming. That is the wrong message. Unable to work and without the possibility of an amnesty, the only alternative for those who have entered illegally will be to return to their homelands.

The current reality that the nation’s immigration laws are not being enforced is the primary reason why illegal immigration not only continues but has gotten progressively worse. Until the nation’s immigration laws are made enforceable and are actually enforced, wisdom dictates that the reform process should stop here. It is the logical first step.