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Revisiting the Administration of Immigration Policy

Abstract

[Excerpt] Discussions of the impact of immigration policy on the population and labor force of the United States typically center on *why* the nation has such a policy (i.e., the national interests that are involved) and what are the specific policy elements that are used to accomplish those ends. Far less attention is given to the process issues as to who administers those policies and *how* is the policy actually implemented and enforced. But answers to the *who* and the *how* questions are of equal importance when it comes to understanding policy outcomes. This is because the administrative processes provide the means to the ends. They determine the way in which policy priorities are established and they provide the mechanisms by which resources (both dollars and manpower) are assigned to accomplish policy objectives. No matter what the national interests sought or what are the laws, rules, regulations, and guidelines enacted to achieve them, the degree to which they are accomplished depends largely on the importance assigned to the issue and the material support devoted to reaching those ends.

Keywords

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

Disciplines

Labor and Employment Law | Labor Economics | Labor Relations | Public Policy

Comments

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Revisiting the Administration of Immigration Policy

By VERNON M. BRIGGS, JR.

Discussions of the impact of immigration policy on the population and labor force of the United States typically center on *why* the nation has such a policy (i.e., the national interests that are involved) and *what* are the specific policy elements that are used to accomplish those ends. Far less attention is given to the process issues as to *who* administers those policies and *how* is the policy actually implemented and enforced. But answers to the *who* and the *how* questions are of equal importance when it comes to understanding policy outcomes. This is because the administrative processes provide the means to the ends. They determine the way in which policy priorities are established and they provide the mechanisms by which resources (both dollars and manpower) are assigned to accomplish policy objectives. No matter what the national interests sought or what are the laws, rules, regulations, and guidelines enacted to achieve them, the degree to which they are accomplished depends largely on the importance assigned to the issue and the material support devoted to reaching those ends.

Immigration policy itself is straightforward in its manifest objectives. It seeks to establish the eligibility standards and procedures needed to regulate the orderly flow of those foreign nationals who have been granted permission to enter the United States on a permanent or temporary basis.

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But when in 2006 there are 12 million illegal immigrants in the country—who collectively account for about one-third of the 35 million foreign-born persons counted as being part of the nation's population—something is seriously wrong with the way that prevailing immigration policy works.¹ The actual magnitude of the policy failure is even worse when it is recalled that, since 1986, over 6 million illegal immigrants have been allowed to adjust their status as the result of seven amnesties that have been granted by congressional actions since that time. This implies that perhaps as many as half of the entire foreign-born population currently in the country may have entered in violation of the nation's prevailing immigration policies. Obviously some of those receiving past amnesties have passed away by now, but it is certain the vast majority are still alive. Moreover, it is believed that there is still a substantial statistical undercount in the "official" figures of the actual number of illegal immigrants in the country—estimated to be at least one million persons.

Furthermore, foreign-born nationals are only permitted to work in the United States if they have become naturalized citizens; been legally granted permanent residence status; or been granted temporary non-immigrant worker status for a limited period of time. Yet the estimate for 2005 is that there are over 7.2 million illegal immigrants (or almost 5 percent of the total civilian work force) working in the nation.

Is the Past Prologue?

Obviously, a chasm exists between the stated goals of the nation's immigration policies and the processes by which these policies are carried out. Can it be that the administrative structure is at least part of the explanation for this gap which persists year after year, decade after decade?

This is not the place to detail the evolutionary history of the administration of immigration policy. It can be found elsewhere.² It is sufficient to summarize that lengthy tale by saying only that it is a Dickensian story that documents the fact that immigration policy has long been treated as a neglected orphan amongst the nation's vast arsenal of public policies. A cursory review of this history reveals that immigration policy has been bounced from one foster agency to another with no governmental department seemingly wanting to take permanent custody or to assume long-term responsibility for its well-being.

Originally, the administration of immigration policy fell upon the individual states to perform—with the results varying directly with the number involved. It was a totally unsatisfactory experience. In the latter half of the nineteenth century, the federal government began gradually to take over some of the duties that logically should have been its responsibility to begin with. First the Department of State took on some of the duties, then the Department of the Treasury, then the Department of Commerce and Labor, then the Department of Labor, then the Department of Justice until on March 1, 2003, when the duties were assigned principally to the newly created Department of Homeland Security (DHS).

From Crisis to Policy Relocation

DHS was created by the passage of the Homeland Security Act of 2002. This legislation was enacted in the wake of the September 11, 2001 attack on the United States by Islamic terrorists. All of the 19 terrorists involved in that assault were foreign nationals who had gained access to the country through the use of temporary non-immigrant visas.³ Four of them were illegal immigrants who, at the time, had violated the terms of their admissions but no one had pursued them. The new legislation,

which the Bush Administration initially opposed, was hastily conceived by Congress with national security being the prime driving force. The fact that immigration policy has multiple dimensions—most of which are critically important to the nation's economic and social well-being but few of which have anything to do with national security—was simply not part of the political equation at the time.

The Homeland Security Act was passed in a "lame-duck" session of the 107th Congress following the November elections in 2002. The creation of the Department of Homeland Security represented the largest re-organization of the federal government since the creation of the Department of Defense in 1947. In total, 22 separate existing agencies of government were transferred to this new Department. Among them were such diverse agencies as the U.S. Secret Service, the U.S. Coast

Guard, the U.S. Transportation Security Administration, and the Office of Science and Technology, as well as the now infamous Federal Emergency Management Agency.

In addition, the previously separate U.S. Immigration and Naturalization Service of the Department of Justice and the U.S. Bureau of Customs of the Department of the Treasury were also transferred to DHS and joined together in a shared mission. Out of this re-shuffle and merger came three new agencies—each of which has some responsibility for the administration of the nation's immigration policies. They are the bureaus for Customs and Border Protection (to monitor the formal border and seaport entry sites); Immigration and Customs Enforcement (to monitor the areas between formal border entry sites and the vast internal areas beyond the borders); and Citizenship and Immigration Services (to perform naturalization duties and visa adjustments). In total, the new Department started with 170,000 employees. It instantly became the third



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largest department in the federal government.

Surprisingly, given the national security rationale used to justify the creation of DHS, the actual visa application process and the issuance of visas to foreign nationals wishing to enter the United States (i.e., the screening process) was left after this re-organization where it was: with the staff of the embassies and consular offices of the Department of State. Logically, such duties would seem to be a fundamental responsibility of DHS. For essentially status and political reasons, these critical duties were not given to DHS in this reorganization of the federal bureaucracy.

The Issue

With over one million legal immigrants admitted each year; with almost 500,000 persons becoming naturalized citizens a year; with over 31 million non-immigrants admitted to the country each year for business, personal, tourism, educational or work purposes (and millions more similar requests denied entry each year); with a variable number of refugees and political asylum applicants but averaging close to 100,000 persons a year; with over one million illegal immigrants apprehended each year; and with over 300,000 to 500,000 illegal immigrants still entering the country each year in violation of existing laws, immigration policy should qualify on its own terms for status as a cabinet level department.

Certainly, if there is even a remote possibility that still another massive amnesty for the 12 million illegal immigrants currently in the country were to

be granted (as is supported by President Bush, and such legislation actually passed the U.S. Senate on May 25, 2006), the creation of a distinctly separate governmental agency exclusively for immigration issue would be mandatory. The estimated family reunification provisions of that proposed amnesty alone would result in over 60 million new legal immigrants in the next 20 years (due to the chain migration features of the legal immigration system).⁴ Processing the paperwork for such a massive number of newly eligible immigrants and their families would, of course, be in addition to the continued necessity to perform all of the lengthy list of duties already cited.

A New Department

Whether or not another mass amnesty is given to the illegal immigrants currently in the country, it is past time to give immigration policy the administrative recognition that the importance of the subject deserves. No longer should it be relegated to being but a minor component of a major governmental agency that has multiple

other duties, none of which has anything to do with immigration. A new agency needs to be created that focuses exclusively on the three critical policy issues that immigration raises for the country. These are:

1. *The immigration function.* The agency would be responsible for performing all the certification duties currently involved with the final issuance of immigrant and non-immigrant visas for those who meet



the admission requirements specified by Congress. It would also be desirable for Congress to delegate to this agency the responsibility to determine the annual number of immigrants that can be admitted each year so that this number could be made flexible to changing conditions (which currently is not the case). Enforcement responsibilities at both the border and internally away from the border would also be part of this agency's portfolio.

2. *The citizenship function.* It is often overlooked that the admission of foreign nationals to the United States is not just concerned with their entry into membership in the labor force and population. It also involves the certification that these persons have met the qualifications for citizenship. Naturalization is the legal name for the process; but the expansion of the ranks of the nation's citizens is the final result. The number involved is not only composed of the original immigrants themselves and their immediate family members but there are also extensive admission entitlements for their extended family members and their relatives under current law. Citizens, of course, have a wide array of entitlements—political and economic.

3. *The population function.* Immigration has become the major determinant

of the growth rate of the nation's population. Currently the United States does not have a population policy, but it desperately needs one. Any serious concern

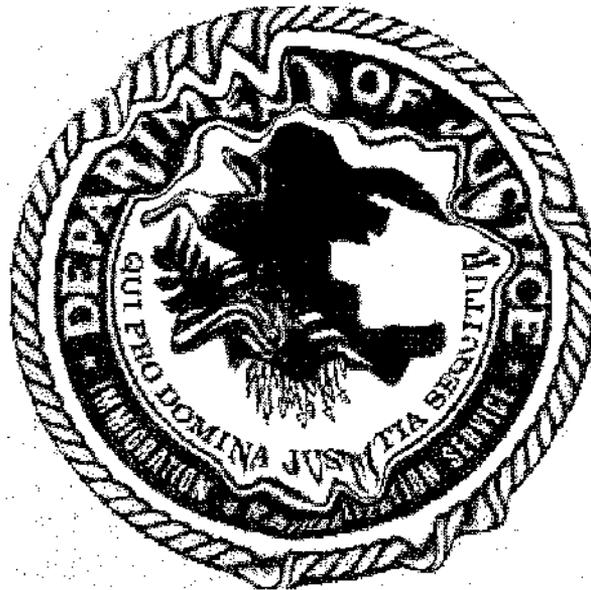
for such future issues as resource depletion, environmental protection, urban sprawl, and energy independence dictates that population size and growth be taken into consideration. Elevating the population issue to the level of governmental decision making by including it in the mission of the agency whose duties most significantly affect the growth of the population would seem to be a fundamental national interest.

Because of the imperative to enhance the visibility, responsibility, and accountability for the performance of these vital functions by our federal government, it is a propitious time to call

for the creation of a new Department of Immigration, Citizenship, and Population. ■

End Notes

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