The Quest for an Enforceable Immigration Policy

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The Quest for an Enforceable Immigration Policy

Abstract
[Excerpt] The central point of concern for the nation and its economic policy makers at this juncture is the recognition that there is a prima facie case that the existing immigration statutes of the United States are totally unenforceable. A comprehensive reform of the system is imperative.

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The Quest for an Enforceable Immigration Policy

VERNON M. BRIGGS, Jr.

Few topics more fundamentally touch the essence of the American experience than immigration. An ethnically heterogeneous population in search of a homogeneous national identity has been the history of the United States. In its evolving and often controversial role, immigration policy has been instrumentally involved in such diverse areas of public concern as human resource policy, foreign policy, labor policy, agricultural policy, and race policy. Yet, until only recently, immigration policy itself has been among the least examined of all public policy measures.¹

Although unrecognized at the time, one of the most significant legislative accomplishments of the administration of President Lyndon Johnson was the passage of the Immigration Act of 1965. Not only were the total number of immigrants annually allowed entry into the United States increased substantially, but the explicit racism of the previous system was also abolished. Despite those major revisions in the legal system, however, illegal immigration has soared in the subsequent years. By the mid-1970s, illegal immigration had become a national issue. In 1977, the Carter Administration proposed a detailed set of policy changes. The specific features of the Carter proposals generated a swell of controversy. The proposals were not enacted, but Congress, feeling that the issue was sufficiently important, authorized in 1978 the establishment of a select commission to study the issue and to report its findings no later than September 30, 1980.² Reubin Askew, the former governor of Florida, was appointed in early 1979 to chair the new commission.

The central point of concern for the nation and its economic policy makers at this juncture is the recognition that there is a prima facie case that the existing immigration statutes of the United States
are totally unenforceable. A comprehensive reform of the system is imperative.

Immigration policy consists of an evolving and complex set of statutory laws, administrative rulings, and court decisions. The federal agency responsible for the administration of the immigration statutes is the Immigration and Naturalization Service (I.N.S.) of the United States Department of Justice.

As the nation's formal immigration policy has evolved, it has passed through three distinct areas: no restriction of any kind (prior to 1888); numerical restriction based upon ethnic discrimination (from 1888 to 1965); and numerical restriction with ethnic equality (since 1965). The advent of the legal and numerical restrictions has led to the problem of illegal immigration. Thus, the issue of illegal immigration cannot be discussed independently of the legal system.

The momentum that led to the passage of the Immigration Act of 1965 was based upon the desire to end the ethnocentric policies of earlier legislation. It was part of the civil rights movement of that era. Little consideration was given at the time of any possible labor market ramifications. The new immigration system reaffirmed the past policy tendencies of accentuating family reunification as the highest entry priority category. Only ancillary attention was given to the other two stated policy objectives: to fill demonstrable skill shortages and to accommodate political refugees. For the first time, however, an aggregate ceiling of 120,000 was imposed on immigration from the Western Hemisphere but no ceiling was set at the time on individual countries. For the Eastern Hemisphere, however, the ceiling was placed at 170,000 with a 20,000 person maximum allowed from any one country. The total hemisphere ceilings (290,000 persons) are greatly exceeded due to quota exemptions for parents, spouses, and children. Mexico became the major source of legal immigrants. Effective January 1, 1977, the basic statute was again amended to set a ceiling of 20,000 per country on all Western Hemispheric nations. In 1978, the separate hemispheric ceilings were eliminated but the total ceiling of 290,000 was retained.

Under the 1965 Act, the total number of legal immigrants admitted to the United States has averaged about 40,000 persons a year (or twice the annual flow for the forty-one years prior to its enactment). Over 60 percent of the legally admitted immigrants go directly into the labor force. Moreover, the present legal system gives highest priority to family reunification. In 1975, for instance, 72 percent of all visas were granted on the basis of family reunification. For most of the small remainder, a nominal effort is made to see that legal immigration does not adversely affect the domestic labor market. The Secretary of Labor has, since 1952, been empowered to block the entry of legal immigrants if their presence would in any way threaten prevailing wage standards and employment opportunities. The Act of 1965 bolstered the permissive language of the earlier legislation by making it a mandatory requirement that non-family related immigrants who are job-seekers received a labor certification. But even in these few cases, there is no probationary period to assure that the conditions of their certification were met. Perhaps even more revealing of the lack of concern for local labor market impact is the fact that about 40 percent of all certifications since 1970 have occurred after the applicant had already illegally entered the country and secured a job.

Thus, on paper, the legal immigration system appears to be both reasonable (in the numbers of persons it annually admits), fair (in terms of its ethnic impartiality), and humane (in the dominance of family reunion and refugee accommodation over labor market impact considerations).

Yet the complexities of the legal immigration system of the United States have essentially been rendered meaningless. Illegal immigration has become the dominant avenue of entry. In 1977, a total of 1,017,000 illegal entrants were apprehended by the I.N.S. The figure is ten times the 100,000 figure of a mere decade earlier with no appreciable changes over the interval in deterrent personnel, tactics, or legal assistance. To be sure, the apprehension figures are misleading due to the fact that many persons are caught more than once. On the other hand, the vast majority of illegal aliens are not caught. Various reports and studies—all admittedly imperfect—have placed the accumulated stock of illegal aliens at being anywhere from three to twelve million persons. Despite the wide range of these "guesstimates," they all concur on the crucial point that the numbers are increasing.

When the annual numerical flow of legal immigrants is combined with conservative estimates of both the annual flow and the accumulated stock of illegal immigrants, it is apparent that the United States is in the throes of the largest infusion of immigrants in its history. This factor alone should justify a policy review.
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When the annual numerical flow of legal immigrants is combined with conservative estimates of both the annual flow and the accumulated stock of illegal immigrants, it is apparent that the United States is in the throes of the largest infusion of immigrants in its history. This factor alone should justify a policy review.
In sharp contrast to the prevailing international trade policies, immigration policy in the United States has proven to be totally incapable of accomplishing its stated objectives. In essence, therefore, there are only three alternatives for the nation. One is to do nothing to change the existing situation (and thereby continue the facade that the nation has an immigration policy, but ignore its inability to accomplish its stated objectives). The second is to abolish the immigration statutes (and let labor supply pressures and market forces find a level of international equilibrium with respect to wages, work standards, and employment opportunities). The third is that the nation can seek to enact a comprehensive immigration policy that is capable of accomplishing its stated objectives. Given the growing magnitude of the problem as well as the existing institutional structure of the nation, the third alternative is ultimately the most likely to prevail.

A complex set of factors is responsible for the growth of illegal immigration. Masses of people—such as those in Mexico and the Caribbean area—leave the familiarity of their homeland and go to an unknown land only if both push and pull pressures are operative. In most instances the “push” factors derive momentum from the related issues of overpopulation, massive poverty, and high unemployment. Of increasing significance are the pervasive structural changes that are occurring within the labor forces of many underdeveloped nations. These changes stem from technological developments and rural-to-urban migration. Likewise, there are the strong economic “pull” factors that emanate from the United States. The relatively higher wages and broader array of available job opportunities of the American economy function as a powerful human magnet.

Related to these broad economic forces are several other relevant considerations. Being pragmatic, American employers are often willing to tap this pool of scared and dependent workers. Prevailing immigration law does not place any penalty upon the act of employing illegal aliens. Because of the “Texas proviso” that was added to the Immigration and Nationality Act of 1952, the act of employment does not constitute the illegal act of harboring.

As for the aliens who have entered the country illegally, 95 percent of those apprehended are given “a voluntary departure.” They are simply returned to their homeland as quickly as possible and often at the expense of the government. Any law under which 95 percent of the violators are not punished can hardly be taken seriously as a deterrent.

In contrast to all other major industrialized nations, the United States does not require work permits that identify who is eligible to work in the country and who is not. Lacking such permits, the social security card (or more explicitly, social security number) has become the minimal requirement for work. In their current form, these cards are easily counterfeited and sold to illegal aliens. Moreover, because local governments in the United States make no effort to check births against deaths, copies of birth certificates are easily obtainable. Often these certificates can be used to lend apparent authenticity to counterfeit social security cards.

Moreover, the INS, which has the responsibility for enforcement of the immigration statutes, has a force and budget that are minuscule relative to its assigned duties. As of 1978, there were only 2,036 border patrol officers plus nine hundred additional investigators for inland duty. Only a fraction of these are actually on duty in any given eight-hour shift of any day.

Obviously, a concern to any discussion of illegal immigration is the number of persons involved. But by the illegal nature of the movement, precise data will never be available. Only figures pertaining to apprehensions exist, and they are suspect due to numerous duplications. Yet the staggering growth of apprehensions over the past decade with virtually no increase in enforcement capability does convincingly indicate that the direction of change is upward. Public discussion of illegal immigration should not be diverted by debates over the actual numbers.

It makes little conceptual difference whether the stock of illegal immigrants is three, six, nine, or twelve million persons. The precise number is irrelevant if one concedes—as all available research indicates—that the number of persons involved is substantial and that the direction of change is toward annually increasing numbers.

Frankly stated, there will never be any better data available on this question. Secretary of Labor Ray Marshall has even been quoted as saying that there is little need for more research on this question. He is correct in the sense that the illegal character of the entire process forestalls the possibility that much will ever be known about the actual number of persons involved. Estimates and anecdotes are all that is going to be available. But before one despair that little can be learned because the data is so poor, it should be realized that this is also the case with respect to most of the major social problems of the day. Reliable data are unavailable about the size of energy supplies, local labor market conditions, crime, narcotics usage, health, and mental illness, to name only a
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few crucial subjects. The problem of illegal immigration is real, and it is going to get much worse in the near future. President Carter's message on illegal immigration in August 1977 stated that "at least sixty countries are significant regular source countries." Although illegal entrants are often discussed in terms of being only an issue of Mexicans, it is likely that they account for no more than half of the annual flow of illegal aliens into the country. Thus, illegal immigration is truly a national issue.

All of the research on the characteristics of illegal aliens shows the major reason that they come is to find jobs. The evidence also indicates that they are largely successful in their quest. Some of the jobs are substandard. They exist only because of the availability of an easily exploitable group (i.e., people who will seldom complain and who are grateful for anything they receive). The vast majority of illegal aliens, however, are not exploited in the sense that they receive wages below the Federal minimum wage. But they do work disproportionately in the low wage labor market. Many illegal aliens, however, work in good paying jobs in manufacturing and construction.

For those who work under exploitive conditions, it is likely that they do not take jobs that citizens would tolerate. Yet this is certainly no excuse for the perpetuation of their presence. If it is legally wrong for citizens to work under unfair working conditions, it is also wrong for illegal aliens to do so. It is grossly unfair for employers who comply with prevailing labor standards to have to compete with employers who do not.

With respect to the low wage labor market (i.e., in the range of the Federal minimum wage and slightly above), it must be recalled that there are millions of citizens who are confined to this sector as well. With the already legislated schedule of annual increases in the minimum wage through 1981, it is very likely that the number of citizens in this group will increase in the next few years. This is especially the case with respect to young workers and female workers, whose unemployment rates are already so high that they constitute a major national problem in their own right.

In many of the local labor markets in which illegal aliens are known to be present in substantial numbers, it is likely that the presence of illegal aliens explains why certain industries remain low wage industries over time. Their presence also explains why many employers in these same industries attempt to justify the employment of illegal aliens by claiming that citizen workers cannot be found to do the work. No American worker is capable of competing with an illegal alien when the end results of the competition depend upon who will work for the lowest pay and longest hours and accept the most arbitrary set of working conditions. Hence, it is a self-fulfilling prophecy for employers to hire illegal aliens and then to claim simultaneously that no citizen workers can be found to do the same work. Illegal immigration hurts all low income workers. Anyone seriously concerned with the working poor of the nation must include an end to illegal immigration as part of any program of improved economic opportunities for economically disadvantaged workers.

One way to increase the job opportunities and the income rewards for the working poor population is to reduce the uncontrolled supply of new entrants into the low wage sector of the economy. Many of the jobs performed by low wage workers are essential to the operation of our economy. Farm workers, dishwashers, laborers, garbage collectors, building cleaners, restaurant employees, gardeners, maintenance workers, to name a few occupations, perform useful and often indispensable work. The tragedy is that their remuneration is often so inadequate. This is largely due to the fact that there is such a large pool of available persons. Most of these tasks are not going to go away if wages increase. One way to see to it that wages do increase and that unionization becomes possible for low wage workers is to reduce the unfair addition of millions of illegal aliens into this sector of the economy. If illegal aliens were flooding into the legal, medical, educational, and business executive occupations of this country, this problem would have received the highest national attention and it would have been solved by now. But because it is the blue collar and service workers' occupations that must bear the brunt of the competition, the issue remains largely unaddressed.

The injustice of unequal enforcement of the law is compounded by the I.N.S. enforcement policies. Namely, for years the I.N.S. has followed the operational tactics of purposely focusing its attention on the apprehension of illegal aliens in "better-paying jobs" rather than in the low wage sector of the economy. It is precisely those helpless citizens who, working in low wage industries, most require the protection of the I.N.S. that are again the most neglected by their own government.

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These are positions for which there are many citizen job seekers. If an illegal alien holds one of these jobs, there is a citizen worker who does not. Yet even under these circumstances, illegal aliens are often “preferred workers” since they are less likely to join unions, or to complain about denial of equal employment opportunity, or to make other strong demands upon employers. Because of their unfair competition, it is in this sector that the I.N.S. is most vigilant in its limited enforcement activities.

Aside from the obvious adverse efforts of illegal aliens on employment and income opportunities for citizen workers, there are other serious long run consequences. The nation is rapidly accumulating a growing subclass of truly rightless persons within our society and institutionalizing their deprived status. Although technically able to avail themselves of many legal rights and protections, few illegal aliens feel free to do so. In addition, they and their family members are increasingly being legislatively excluded from much of the basic social legislation in this nation. These exclusions vary from the Federal level where illegal aliens are excluded from receipt of Supplemental Security Income, Medicaid, and Aid to Families with Dependent Children, to individual state exclusions from unemployment compensation programs, and even, in some cases, from attending public schools without being charged tuition. At all levels, illegal aliens are denied the political right to vote as well as being excluded from the antidiscrimination provisions of Title VII of the Civil Rights Act of 1964. Certainly the growth of a subclass of rightless illegal aliens is in no one’s long term interest. It is a time bomb. The adults may be grateful for the opportunities provided them, but it is certain that their children will not, nor should they be.

Some short-run private sector gains may be realized by the hiring and often by the exploiting of alien workers. But in the long run the presence of a growing number of workers (and their dependents) who are denied minimum political, legal, and job protections; who are under the constant fear of being detected; who work in the most competitive and least unionized sectors of the economy; and who are easily victimized by criminal elements cannot possibly be in the public interest. Over the two centuries of its existence, the United States has slowly developed numerous laws, programs, and institutions designed to reduce the magnitude of human cruelty and the incidence of economic uncertainty for most of its citizens. For the illegal alien workers, however, these benefits are virtually nonexistent. It would be self-deception to believe that this situation can continue to develop without eventual dire consequence to all parties concerned.

This brief review of the prevailing immigration system of the United States reveals that it contains little order and is inconsistent in its objectives, and that its few prohibitions are observed more in their breech than in their adherence. The current system is ineffective primarily because it is unenforceable. As the scale of immigration in all of its forms has increased dramatically in the past decade, the absence of a meaningful immigration system has become both more obvious in its effects and more ominous in its implications. A number of policy changes are in order.

In groping for the proper course for public policy to pursue, one must begin with the stark realization that in a free society, illegal immigration cannot be totally stopped. No consensus will support the erection of a “Berlin Wall in reverse” that is designed to keep people out rather than in—or any equivalent drastic step. The best that possibly can be hoped is that the problem can be brought within manageable proportions.

The mandatory first step is the passage of a federal statute that will forbid the employment of illegal aliens. Such a bill had cleared the United States House of Representatives in 1972 and 1974 only to die in a committee of the Senate. Passage of a federal statute of this nature is a must. The foundation stone of policy reform must be built upon the premise that the employment of illegal aliens is an illegal act. Strong civil and, perhaps, criminal penalties should be set for repeat offenders.

Candidly speaking, one must say that the enactment of a law against employment of illegal aliens will not accomplish much. Such a law will depend upon proof that the employer “knowingly” broke the law. Proving this will be immensely difficult, if not impossible. Moreover, it is very doubtful that many district attorneys would press for enforcement or that many juries would convict an employer for the offense of providing jobs to anyone. With court dockets already backlogged with serious crimes, it is hard to imagine that many employers would ever be brought to trial. Yet the possibility of prosecution would exist. Moreover, there would be some voluntary compliance and, at least, the moral weight of the law would be against the employment of illegal aliens. As meaningless as such a ban may prove to be, nothing else makes sense until such a law is on the books.

Immigration Policy
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Aside from the obvious adverse efforts of illegal aliens on employment and income opportunities for citizen workers, there are other serious long run consequences. The nation is rapidly accumulating a growing subclass of truly rightless persons within our society and institutionalizing their deprived status. Although technically able to avail themselves of many legal rights and protections, few illegal aliens feel free to do so. In addition, they and their family members are increasingly being legislatively excluded from much of the basic social legislation in this nation. These exclusions vary from the Federal level where illegal aliens are excluded from receipt of Supplemental Security Income, Medicaid, and Aid to Families with Dependent Children, to individual state exclusions from unemployment compensation programs, and even, in some cases, from attending public schools without being charged tuition. At all levels, illegal aliens are denied the political right to vote as well as being excluded from the antidiscrimination provisions of Title VII of the Civil Rights Act of 1964. Certainly the growth of a subclass of rightless illegal aliens is in no one's long term interest. It is a time bomb. The adults may be grateful for the opportunities provided them, but it is certain that their children will not, nor should they be.

Some short-run private sector gains may be realized by the hiring and often by the exploiting of alien workers. But in the long run the presence of a growing number of workers (and their dependents) who are denied minimum political, legal, and job protections; who are under the constant fear of being detected; who work in the most competitive and least unionized sectors of the economy; and who are easily victimized by criminal elements cannot possibly be in the public interest. Over the two centuries of its existence, the United States has slowly developed numerous laws, programs, and institutions designed to reduce the magnitude of human cruelty and the incidence of economic uncertainty for most of its citizens. For the illegal alien workers, however, these benefits are virtually nonexistent. It would be self-deception to believe that this situation can continue to develop without eventual dire consequence to all parties concerned.

This brief review of the prevailing immigration system of the United States reveals that it contains little order and is inconsistent in its objectives, and that its few prohibitions are observed more in their breach than in their adherence. The current system is ineffective primarily because it is unenforceable. As the scale of immigration in all of its forms has increased dramatically in the past decade, the absence of a meaningful immigration system has become both more obvious in its effects and more ominous in its implications. A number of policy changes are in order.

In groping for the proper course for public policy to pursue, one must begin with the stark realization that in a free society, illegal immigration cannot be totally stopped. No consensus will support the erection of a "Berlin Wall in reverse" that is designed to keep people out rather than in—or any equivalent drastic step. The best that possibly can be hoped is that the problem can be brought within manageable proportions.

The mandatory first step is the passage of a federal statute that will forbid the employment of illegal aliens. Such a bill had cleared the United States House of Representatives in 1972 and 1974 only to die in a committee of the Senate. Passage of a federal statute of this nature is a must. The foundation stone of policy reform must be built upon the premise that the employment of illegal aliens is an illegal act. Strong civil and, perhaps, criminal penalties should be set for repeat offenders.

Candidly speaking, one must say that the enactment of a law against employment of illegal aliens will not accomplish much. Such a law will depend upon proof that the employer "knowingly" broke the law. Proving this will be immensely difficult, if not impossible. Moreover, it is very doubtful that many district attorneys would press for enforcement or that many juries would convict an employer for the offense of providing jobs to anyone. With court dockets already backlogged with serious crimes, it is hard to imagine that many employers would ever be brought to trial. Yet the possibility of prosecution would exist. Moreover, there would be some voluntary compliance and, at least, the moral weight of the law would be against the employment of illegal aliens. As meaningless as such a ban may prove to be, nothing else makes sense until such a law is on the books.
The obvious question that follows is, how does an employer know if a person is a citizen or not? A query is hardly sufficient. With fraudulent documents easily accessible to anyone desiring them, mere possession of any of the standard means of identification would likewise be no deterrent. The only answer is the issuance of noncounterfeitable and unalterable social security cards to the entire population. Through the use of special codes already developed by cryptographers and computer experts, such a social security card would allow easy verification of the citizenship status of any would-be employee. It was announced by I.N.S. in 1977 that a similar noncounterfeitable card will be issued to the 4.2 million resident aliens who live in this country. It will, in essence, become their identity card.

There are, of course, legitimate fears about the establishment of what is tantamount to a work permit system in this country. Despite the fact that work permits are used in all other free nations of the world, it is true that authoritarian governments also use them as a means of citizen control, thus depriving citizens of civil liberties. The social security card, however, is already required as a condition of employment of virtually everyone. Like it or not, the social security number has already become a national identification system. The social security number is used as a student number on many campuses; it is used as the driver's license number in many states; it is used by the Internal Revenue Service to identify taxpayers; and it is the serial number of all people in the military. The point is: it is absurd to worry about whether something will happen if it has already happened! The only questions that remain are: Should social security cards be made noncounterfeitable, and should checks be made of these cards to assure that those who are using them to seek employment are legally entitled to have them? Certainly no one can seriously disagree with such objectives.

The necessity of significantly enlarging the number of I.N.S. enforcement officials is too obvious to be belabored. As long as this staff is less than the size of the police force of the city of Houston, there is absolutely no way that even the current statutes can be enforced. Aside from apprehension of illegal aliens, the agency has numerous other duties to perform. A substantial increase in the number of I.N.S. enforcement officers would be by far the most effective short-run deterrent that could be initiated. In addition, the I.N.S. should have exclusive responsibility for checking all persons who pass through inspection ports of entry.

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It is essential that the I.N.S. rely less on the voluntary departure system. The policy objective that illegal aliens are unwanted guests can never be taken seriously as long as there is virtually no chance of any penalty being imposed on offenders. Until all illegal aliens can be identified, records kept, and repeat offenders subjected to formal deportation (which would permanently preclude those individuals from ever becoming legal immigrants), there is no reason for an illegal alien to even ponder the risks—the alien has nothing to lose. More reliance on legal procedures, however, will be costly and time consuming and will also necessitate an increase in the I.N.S. budget. But these costs, as well as expenses related to the acquisition of more detection hardware, must be weighted against the aforementioned costs of allowing this mushrooming problem to continue. It will be far less costly to assume a strong posture of prevention than it will be to respond to the social problems inherent in this issue after they accumulate.

In the same vein, international policies must be part of the policy mix to reduce the flow of illegal immigrants. These must address the “push” factors; they should be directed primarily at efforts to assist in the economic development of the hemispheric neighbors of Mexico and the Caribbean area. These measures should include extensive offers of technical and financial assistance. It may be that efforts of this kind must be made through established multinational agencies—such as the World Bank, the International Monetary Fund, or the United Nations—instead of unilaterally. Mexico, in particular, is a proud nation; its leaders abhor the concept of direct foreign aid.

It must be realized that to some degree the illegal alien problem from Mexico is a by-product of past actions by the United States. For too many years, Mexico was seen as a pool of cheap labor that could be tapped at will throughout the Southwest. Hence, United States policymakers cannot be oblivious to the involvement of policy in the creation of the problem. For this past role the United States is obligated to assist the Mexican government in the reduction of the economic forces that continue to push many of its citizens into the illegal immigration stream. To be sure, the population explosion, the rural-to-urban migration, and the structural labor market changes resulting from technological change in Mexico would cause the illegal alien flow to occur regardless of any past actions by the United States. But that contention is really moot. The fact is that the United States did contribute to some of the forces
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that have institutionalized the illegal alien process. The United States cannot place the full responsibility for stopping the flow upon Mexico.

The imposition of the 20,000-person quota to Mexico in 1977 was arbitrary. The low quota serves only as an additional prod to illegal entry. Mexico deserves a continuation of the special treatment that it has always been accorded in the past. Although some ceiling should be imposed, it should at least be in rough approximation to past legal immigration levels (i.e., about 50,000 persons a year).

The final step that must be taken to end the problem of illegal immigration is granting general amnesty to all illegal aliens who have been in this country since January 1, 1973, providing that they register with the INS within an established grace period and that they have no record of criminal activity. The date of January 1, 1973 is chosen because it was on that date that amendments to the Social Security Act took effect that specified that applicants for Social Security cards be required for the first time to furnish evidence of their citizenship. There is precedent for such an amnesty. In 1965 amnesty was granted to all illegal aliens living in the United States prior to 1948. There should be absolutely no intention to issue another amnesty at some subsequent date. Because the tolerant policy of the past has unofficially condoned the influx of aliens, it is unrealistic to believe that any roundup of aliens who have established themselves in jobs and have families could be accomplished without serious hardship and much ill will. The accomplishment of the goal of ridding the labor market of illegal aliens should not be contrary to basic humanitarian concepts. Hence, amnesty is a must but only as the last step of a comprehensive reform program.

On August 4, 1977, the long-delayed proposals of the Carter Administration for reform of the immigration system were made public. A key element of the comprehensive package was the call for employer sanctions. Hiring illegal aliens would be an illegal act. Enforcement, however, would be limited to those employers who engaged in a “pattern or practice” of hiring illegal aliens. Injunctive relief and civil fines of up to $1,000 per alien would be the penalties. A list of acceptable identification items—including the existing social security card—would be prepared by the Justice Department. To be in compliance, an employer need only to see that they have seen one of them. Of crucial importance is the fact that the employers would not be required to verify the authenticity of the identification nor would they be required to keep records of the documents they have seen.

The proposed employer sanctions would pre-empt all existing state and local laws that prohibit the employment of illegal aliens. As of the time of the President’s proposals, three cities and twelve states had enacted such statutes, and fifteen additional states had similar proposals pending. The constitutionality of these state bans was unexpectedly upheld by the Supreme Court in 1976. The Court held that a California law forbidding the employment of illegal aliens did not invade the exclusive authority of the federal government to set immigration policy.

Accompanying the employer sanctions would be “increased enforcement” of the Fair Labor Standards (FLSA) and the Federal Farm Labor Contractor Registration Act as well as improved liaison between INS and FLSA enforcement personnel. Increased vigilance would be requested of the Equal Employment Opportunity Commission to assure that minority citizens are not adversely affected by any discriminatory fallout from the alien hiring ban. Criminal penalties would be invoked against persons who act as human smugglers and brokers of alien workers.

The plan called for almost a doubling of the enforcement personnel of the I.N.S. Criminal penalties would be sought for those who provide false identification documents.

But perhaps the most controversial portion of the proposal dealt with the question of amnesty. Permanent resident alien states would be given to all illegal entrants who have lived continuously in the United States since January 1, 1970 but before January 1, 1977, a new class of “temporary resident alien” would be created. These persons would be required to register with the I.N.S. within one year, and they would be allowed to remain in this country in this new status for a period of five years. They would not be allowed to bring in any family members, and they would be ineligible for almost all federally assisted social programs (e.g., food stamps, medicaid, and Aid for Families with Dependent Children). The adjustment status of all affected persons would not be counted against the existing legal quotas regardless of country of origin. Anyone who has entered the country since January 1, 1977 would be deported upon apprehension.

The proposal also included foreign policy provisions. Negotiations would be sought with Mexico and other source nations to seek their assistance in the enforcement and anti-smuggling provisions. Furthermore, consideration would be given to economic assistance to source countries to develop labor intensive projects. Information would also be given, if requested, about birth control
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methods. Increased trade with sending countries for the export of labor intensive projects would "be explored."

Focusing public attention on the issue of illegal immigration is not a call for a policy of exclusion of immigrants or of national isolation from world problems. The United States has a liberal legal immigration policy and, being "a nation of immigrants," it should continue to have such a policy posture. Rather, the issue involves the necessity of protecting the legal immigration system by assuring that it is capable of accomplishing its stated goals. Effective regulation is what must be added.

Obviously, the Carter plan was the product of a series of compromises within the Administration and between its political supporters. Congress did not act on the Carter proposals. Instead, it decided to set up the aforementioned select commission to offer comprehensive proposals.

Looking at the Carter Plan, it is apparent that it resembles in part but differs in significant degree from the comprehensive proposals outlined in this paper. There is no need to repeat the similarities, but the differences require elaboration.

The most crucial difference pertains to the identification question. The Department of Labor had sought to address the question head-on by re-issuing Social Security cards in a noncounterfeitable form. This card would have been the accepted identifier. The Department of Justice, however, feared civil liberties criticisms over the establishment of such a system, and its position prevailed. As a result, the proposed employer sanctions provision is essentially meaningless. The real efficacy of the reform proposals, therefore, is in serious doubt.

The proposed two-tier provisions for adjusting the status of the illegal entrants already in the country was of dubious merit. For those potentially eligible for permanent citizenship, it is unclear what was meant by the term "continuously" living in this country. As for the "temporary resident aliens," it was unofficially believed that after five years they too would have been eligible for permanent resident alien status. But because there was no certainty that this will be the case, it would have raised fears by many illegal entrants as to the wisdom of exposing their whereabouts through registration. Many probably would not have come forth. Likewise, it is certainly questionable whether a law could or should prevent families from being unified for upwards of five years. Also, by specifically declaring these registered persons to be ineligible for prevailing social legislation, aliens in dire need would have been denied needed services.

The Carter proposal did recognize the need to enhance trade opportunities for source nations, but it did not specifically recognize the necessity of tariff reductions. Nor did it take the opportunity to press for such a venture as a common market of Caribbean and/or North American continent nations. Reducing the "push" pressures for illegal immigration should be given equal attention with those measures designed to reduce the "pull" forces. In the proposed package, this was not the case.

Rather than be content to continue to allow a small fraction of the world's poverty population to enter the United State illegally each year, the contribution of the nation to efforts to reduce human cruelty should be more broadly focused. Greatly increased economic aid, expanded family planning assistance, technical assistance, and enhanced international trade opportunities should be the cornerstones of the nation's policies with third world nations.

Yet, despite its apparent deficiencies, the Carter proposals did acknowledge at the highest level of our government that the existing immigration laws are unenforceable. They did recognize the urgency to alter the ineffectual system that currently exists. They have attracted publicity to the issue and they generated substantial public discussion. Immigration reform has not yet received the priority it deserves but, at least, it is now firmly secure on the nation's agenda of needed social action. The issue is no longer whether the nation will act but, rather, when and in what fashion.

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The Private Sector Initiative Program: A New Thrust

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The Private Sector Initiative Program (PSIP), announced by President Carter in his State of the Union message in January 1978, has moved rapidly from a concept to an operating reality. PSIP became title VII of the Comprehensive Employment and Training Act (CETA) Amendments of 1978, administered by the Department of Labor (DOL). It is designed to increase the involvement of the private sector—which is the source of four out of five jobs—in the employment and training of economically disadvantaged CETA participants by enlisting local energies in forms that reflect local diversity. Ernest G. Green, the DOL’s assistant secretary for employment and training, has called PSIP “the centerpiece of the Carter Administration’s effort to swing the employment and training pendulum back to private sector job creation.”

Administered by the Employment and Training Administration (ETA), PSIP embodies a flexible, highly decentralized approach to human resources development, emphasizing active participation of employers, large and small, in the multibillion dollar CETA program.

This new direction in human resources policy resulted partly from the Government’s increasing concern with structural unemployment—high jobless rates among workers who lack the skills, education, work habits, or attitudes to compete for or to hold available positions.

Another reason for enhancing the Federal Government’s relationship with private industry is the expected scarcity of skilled workers in the 1980s. PSIP offers private employers the opportunity to hire and train the workers their firms will need while fulfilling the Government’s commitment to help those who would be excluded from secure, permanent jobs because they lack required skills.