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MIGRATION POLICY INSTITUTE

Policy Brief

SUMMARY

As the Senate prepares to debate "comprehensive" immigration reform, policymakers are mainly focused on possible expansions to lawful permanent resident admissions, a new temporary worker program, and a range of contrasting policies targeting the unauthorized population within the United States. Yet proposed reforms likely would fail to address the mismatch between visa supply and demand, the system's over-reliance on temporary nonimmigrant visas, inefficient immigrant labor regulations, and the challenges of responding to the roughly 11 million unauthorized immigrants living in the United States.

This Policy Brief evaluates the ability of current proposals to resolve these flaws and provides criteria for considering competing approaches. Is it possible to design rules for visa distribution and immigration regulations that would strike the right balance in permitting family reunification, meeting employers' labor demands, preventing negative economic effects, and deterring unauthorized inflows? Rather than throwing their hands up at the complexity of the immigration system, policymakers should see global competition to enter the United States as an opportunity: visa scarcity means that policymakers are in a "buyer's market." Reformers should take advantage of this situation to ensure that the United States attracts and retains the immigrants most likely to support US national interests.

"Comprehensive" Legislation vs. Fundamental Reform: The Limits of Current Immigration Proposals

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Introduction

Amid widespread concern about unauthorized immigration to the United States, President Bush and the 109th Congress have focused increased attention on immigration reform. One approach, the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005 (H.R. 4437), which passed the House of Representatives in December, defines the policy problem strictly as one of unauthorized immigration and responds by strengthening existing enforcement tools. In contrast are various "comprehensive" reform proposals, which would combine enhanced border and interior enforcement with changes to the lawful permanent resident (LPR) visa system, the nonimmigrant visa system, and the status of unauthorized immigrants now living in the United States.

Existing proposals do not consider changes to the basic structure of the legal migration system. They also fail to fully address four main problems characterizing the existing regime:
- The visa supply is not well targeted to meet the demand;
- The labor immigration system is overly reliant on temporary nonimmigrants;
- Regulations combating wage depression are cumbersome and ineffective; and

- A large unauthorized population now resides within the United States.

This Policy Brief summarizes competing approaches to comprehensive immigration reform and assesses them in light of these four problems.

Background

The US immigration system is designed primarily to allow family reunification and to meet labor market needs. (A third goal, refugee protection, will not be addressed in this brief.) In pursuit of these goals, the system governs the legal entry of 2.5 million individuals (excluding tourists and short-term business travelers) from 200 countries each year. At its core, US immigration policy is concerned with the rationing and oversight of a scarce resource — visas — under conditions of imperfect information and conflicting social and economic pressures.

Visas are divided into two broad classes, with separate rules governing the distribution of lawful permanent resident visas (about 44 percent of visas issued in 2004) and visas granting temporary (nonimmigrant) residency (the remainder). Selection criteria are complex, with most LPR and nonimmigrant visas distributed on the basis of immigrants' relationships with family members in the United States or employers' demands for immigrant workers (see Table 1). Additional rules restrict the terms of immigrant admissions — limiting access to welfare and some other public services and imposing time limits and work restrictions on nonimmigrants. They also regulate the recruitment, wages, and working conditions of employment-based immigrants in an effort to protect US workers.

Proposals for "Comprehensive" Immigration Reform

Existing comprehensive reform proposals would combine enhanced border and interior enforcement with changes to the LPR and nonimmigrant visa systems, and specific efforts to respond to the population of unauthorized immigrants now living within the United States.

Table 1. Visas Issued by Class and Selection Criteria, FY 2004

Selection Criteria	Legal Permanent Residents	Nonimmigrants
Employment Based	72,552[a]	877,752[d]
% total	7.7 %	72.8 %
Family Based	703,188[b]	267,255[e]
% total	74.3 %	22.2 %
Other	170,402[c]	60,258[f]
% total	18.0 %	5.0 %
Total	946,142	1,205,625[g]

Notes: [a]excludes derivative visas; [b]includes family members of employment-based visa categories; [c]includes country-specific and humanitarian visas as well as cancellations of removal; [d]includes students and exchange visitors; excludes derivative visas; [e]includes family members of employment-based visa categories; [f]includes representatives to international organizations, representatives of foreign information media, and NATO officials; [g]excludes foreign government officials, temporary visitors for business and pleasure, transit aliens, and foreign crew members.

Source: US Department of State, "Report of the Visa Office," 2004; US Department of Homeland Security, *Yearbook of Immigration Statistics*, 2004.

1. Proposed Changes to the Lawful Permanent Resident (LPR) Visa System

Many comprehensive reform proponents believe that the legitimate demand for visas outstrips the supply, or that a higher level of visa issuance would support the goals of family reunification and economic growth without damaging the US economy or society. Several proposals would therefore seek to expand the supply of LPR visas by raising the overall level of LPR visa issuance, changing how LPR visas are allocated, and easing public charge restrictions against low-income immigrants.

Increase lawful permanent resident admissions

Three proposals would substantially increase numerical limits on LPR visa issuance:
• The Secure America and Orderly Immigration Act (S. 1033/H.R. 2330, introduced by Senators John McCain and Edward Kennedy and by Representatives Jim Kolbe, Jeff Flake, and Luis Gutierrez) would more than double both family and employment-based limits;
• Senator Arlen Specter's November 9 Chairman's Mark incorporates the McCain-Kennedy formula for changes to LPR numerical limits; and
• The Save America Comprehensive Immigration Act of 2005 (H.R. 2092, introduced by Sheila Jackson Lee) would increase family-based LPR migration by a factor of almost four, to 960,000 annual admissions.

In addition, the McCain-Kennedy proposal, the Specter draft, and the Comprehensive Enforcement and Immigration Reform Act of 2005 (S. 1438, introduced by John Cornyn and John Kyl) would increase per-country LPR limits from 7 percent to 10 percent of the global total. This change would increase overall admissions by allowing the most significant countries of origin (Mexico, China, India, and the Philippines) to absorb a greater share of now under-utilized visa categories.

A third Congressional strategy for increasing overall LPR admissions involves exempting additional classes of LPR visas (currently limited to immediate families of US citizens) from numerical limits:
• Specter's proposal would exempt certain high-skilled employment-based visas (EB-1 visas and EB-2 visas for those immigrants qualifying for a national interest waiver) as well as derivative visas for the families of all employment-based immigrants.
• Senator Chuck Hagel's Immigrant Accountability Act of 2005 (S. 1919) would exempt immediate family members of all employment-based immigrants; and his Strengthening America's Workforce Act (S. 1918) would allow some low-skilled nonimmigrants to obtain LPR status without regard to numerical limits.

Restructure lawful permanent resident distribution

In addition to these proposed increases in the overall level of LPR visas, current reform proposals consider a pair of changes in how LPR visas are allocated:
• Recognizing unmet demand for legal low-skilled immigrant labor, the McCain-Kennedy, Cornyn-Kyl, and Specter proposals would shift labor-based LPR visas away from the EB-1 and EB-2 highly skilled categories and the EB-5 investor category to lower skilled EB-3 workers. These proposals would also eliminate the EB-4 religious worker preference altogether in favor of EB-3 visas.
• The Cornyn-Kyl bill would also eliminate the current diversity visa category, shifting these visas to the employment-based total.

Ease "public charge" restrictions

A final set of proposed changes to LPR visa rules would facilitate family reunification by relaxing public charge criteria intended to prevent immigration by those requiring public assistance:

- The McCain-Kennedy and Specter proposals would lower the income level at which US citizens and legally resident families can offer affidavits of support to sponsor low-income family members. The McCain-Kennedy and Specter proposals would return this "deeming requirement" to its historical level of 100 percent of the poverty rate, instead of 125 percent as enacted in 1996.
- The Jackson Lee proposal would eliminate the public charge restriction altogether for family-based LPR migration.

2. Proposed Changes to the Nonimmigrant Visa System

In addition to these proposals to increase and restructure LPR admissions, members of Congress and President Bush are also considering increasing the number of nonimmigrant visas, as well as changing the terms of nonimmigrant visas and their regulatory structure.

A new temporary worker program

In his 2004 State of the Union address, President Bush called for a large scale temporary worker program to "match willing workers with willing employers." Four Senate bills (McCain-Kennedy, Cornyn-Kyl, Hagel's S. 1918, and Specter's draft) also place a large temporary worker program at the center of their proposals. Under each, a new program would generally resemble existing job-based H-2 visa programs; the programs differ in their proposed size:

- McCain-Kennedy and Specter would set an initial limit of 400,000 new nonimmigrant visas, and would establish an automatic procedure to adjust this cap up or down as a function of whether and how quickly visa limits are met each year.
- Hagel would set a limit of 250,000 H-2C visas (good for two years) and 100,000 H-2B visas (good for nine months).
- Cornyn-Kyl and Bush would impose no numerical limit on new temporary work visas.

Temporary worker program: terms of admission

With some restrictions, each proposal would allow visa holders to change jobs (i.e., visas would be "portable"). Yet they differ in three important ways. First, the five proposals describe three different time periods:

- Bush, McCain-Kennedy, and Specter would create three-year visas, which would be renewable one time;
- Cornyn-Kyl would create two-year visas, renewable twice; and
- Hagel would create two-year visas, renewable one time.

Second, the proposals differ in terms of change of status:

- The McCain-Kennedy, Hagel, and Specter proposals would allow temporary workers who comply with program restrictions to apply for adjustment to LPR status eventually;
- The Bush proposal does not include an automatic path to adjustment, but would allow qualified visa holders to apply for other types of visas through existing channels; and
- The Cornyn-Kyl proposal would explicitly forbid temporary workers from adjusting to LPR status.

Third, Cornyn-Kyl would impose additional restrictions on nonimmigrant visa holders to promote their eventual return migration:

- A portion of temporary workers' wages would be withheld as bonds, redeemable upon return to their countries of origin;

- Temporary workers would be required to return to their home country for a full year in between visa renewals and for at least one week during each visa year; and
- Participants would be required to waive their rights to appeal removal orders or other immigration enforcement actions taken against them; and judicial review of temporary worker visa distribution and removal orders would be limited.

Temporary worker program: regulatory environment

All four Senate proposals and the Jackson Lee bill in the House would protect US workers from competition by requiring employers to list vacancies in electronic registries (e.g., America's Job Bank) for thirty days prior to hiring temporary workers (or fifteen days prior to hiring H-2B nonimmigrants in Hagel's case) and to maintain records for at least one year documenting why US workers were not hired. Additional provisions for promoting the recruitment of US workers would:

- Require that employers advertise in local media outlets and publications accessible to local labor (Hagel, Jackson Lee);
- Require that employers make job offers to any qualified native who applies (Hagel); and
- Require that employers recruit from ethnic minority groups in particular (Jackson Lee).

McCain-Kennedy, Specter, Hagel, and Jackson Lee would also strengthen existing regulations to guard against adverse wage effects:

- Temporary workers could not be hired as independent contractors (McCain-Kennedy and Specter);
- Temporary workers could not be used as strike breakers or otherwise inserted into labor disputes (Hagel, McCain-Kennedy, Specter);
- Extensive reporting and oversight provisions would be established to limit the role of foreign labor contractors (McCain-Kennedy);

- Temporary workers would be covered by all US labor laws (McCain-Kennedy, Hagel, Specter);
- Special language would prohibit threatening employees on the basis of their immigration status or as retaliation against whistle blowers (McCain-Kennedy, Jackson Lee, Specter);
- Extensive enforcement provisions would be established for cases of temporary worker abuse, including for the payment of back wages, the possibility of criminal charges against employers, and so on (McCain-Kennedy and Specter);
- A task force would be established to investigate cases of temporary worker exploitation (Jackson Lee);
- A Bureau of Labor Standards report on adverse wage effects would be ordered (Hagel);
- Employers would be required to pay temporary workers the higher of prevailing wages as defined by the US Department of Labor (DOL) or actual wages and benefits paid to US workers (Hagel);
- Employers would be required to offer temporary workers and US workers the same wages, benefits, and working conditions (McCain-Kennedy, Specter); and
- Employers would be required to fully specify job details prior to hiring temporary workers (Hagel).

Other nonimmigrant visas changes

Besides a low-skilled temporary worker program, the Hagel and Specter proposals would seek to attract and retain high-skilled immigrants by liberalizing the terms of admission for other visa categories:

- Hagel would allow high-skilled temporary workers on H-1B visas to adjust to LPR status after three years;
- Specter would allow students on F visas to adjust to LPR status on the basis of family connections;
- Hagel and Specter would make it easier for

students on F visas to work in the United States; and

• Hagel would allow graduating F visa holders with advanced degrees in science, math, technology, or engineering to obtain H-1B visas immediately without regard to H-1B numerical limits.

3. Proposed Policy Responses to the Existing Unauthorized Immigrant Population

Finally, each of these proposals addresses the problem of the resident unauthorized population within the United States. Policy responses differ in terms of whether they would allow unauthorized immigrants to work in the United States and whether they would allow them to obtain legal permanent status eventually:

• Bush, Cornyn-Kyl, and Specter would allow unauthorized immigrants to work in the United States without first returning home. The President would allow them to enroll in a temporary worker program and the Senators would establish a "Deferred Mandatory Departure" status. All three would deny workers in these programs the opportunity to adjust to LPR status automatically.

• Hagel and McCain-Kennedy would allow unauthorized immigrants within the United States to enroll in a temporary worker program and would allow temporary workers to adjust to LPR status eventually.

• In addition, Hagel, McCain-Kennedy, and Jackson Lee would provide opportunities for other unauthorized immigrants within the United States to adjust to LPR status outside of a temporary worker program, with Hagel and Jackson Lee limiting this opportunity to unauthorized immigrants who entered the United States five years prior to passage of a bill.

Flaws in the Legal Immigration Regime and the Limits of Comprehensive Reform

Some elements of these proposals would represent important improvements, but they leave the overall structure of the current system intact. Thus, four basic problems would persist.

1. The visa supply is not well targeted to meet the demand.

Much of the current discussion focuses on the problem of unmet demand for visas. Indeed, families seeking reunification with their loved ones abroad and employers who have problems recruiting high- and low-skilled US workers regularly bump up against existing limits on legal migration:

• Despite the primacy placed on family-based selection criteria within the LPR system (see Table 1), waiting lists for some family visas are as long as twenty-two years. As a result, many fourth-preference (sibling) immigrants who apply for entry in the prime of their lives are not allowed to enter the United States until they reach retirement age. This undermines their economic contributions and the logic of family reunification. It also leads some to resort to illegal migration.

• Only a handful of visas (5,000 EB-3 visas and 66,000 short-term H-2B visas per year) are set aside for the relatively low-skilled immigrants who make up 43 percent of the foreign-born workforce in the United States. Many of the estimated 700,000 unauthorized immigrants entering each year would opt for legal entry if more low-skilled visas were made available.

• Even employers of high-skilled workers confront labor shortages. H-1B visa quotas are regularly exhausted early in the fiscal year (including on the first day of fiscal year 2005 and in the first month of fiscal year 2006);

EB-1 and EB-2 LPR visa quotas were exhausted for Indian and Chinese immigrants in 2005; and visa officials expect global limits on EB-2 visas to be reached for the first time ever during 2006.

Proposed reforms
All of the comprehensive reform proposals in the Senate, as well as the President's plan, would respond to visa shortages by substantially expanding nonimmigrant labor migration. (See the following section.) The Congressional reform proposals would also change LPR selection criteria, potentially producing the following overall effects:

- Increased family-based admissions. The Specter proposal would add about 150,000 family-based visas, McCain-Kennedy about 200,000, and Jackson Lee about 600,000. None would substantially change the relative weight attached to different family-based visas categories. The Specter and Hagel proposals would expand derivative family-based flows (i.e., the families of employment-based migrants) by roughly 300,000 and 400,000 individuals respectively.
- Increased employment-based admissions. The Specter proposal would generate about 160,000 additional high-skilled and 160,000 additional low-skilled LPR visas; Hagel's proposal would generate about 140,000 additional high-skilled visas and 260,000 additional low-skilled visas; and McCain-Kennedy's proposal would generate about 200,000 additional low-skilled LPR visas.
- Increased employment-based admissions with unchanged overall inflows. By eliminating the diversity visa and investor visa programs, the Cornyn-Kyl proposal would generate about 50,000 additional labor-based visas, mostly for low-skilled workers.

Evaluating these reform proposals in light of unmet demand for visas depends on two questions: how many immigrants should the United States admit each year, and how should visas be distributed? Answers to these two questions can be proposed by analyzing the economic and non-economic effects of migrant inflows.

Meeting the unmet demand for visas: economic considerations
Immigration promotes economic growth without inflation, primarily because immigrants tend to be entrepreneurial and are more likely than US natives to be of prime working age. These demographics are of increasing importance with baby boomer retirements and declining native birthrates. And immigrants are over-represented in many of the more productive sectors of the US economy, accounting for a majority of all new jobs created between 2000 and 2003. These economic benefits are diminished if migrants compete with US workers for jobs and depress wages. To the extent that immigrants and natives operate within separate labor markets — a point on which economists disagree — negative wage effects are modest or non-existent.

An additional economic question is the fiscal impact of immigration. Over the course of their lifetimes, immigrants pay more in taxes than they consume in services. But this effect is highly sensitive to immigrants' skill levels (which determine wages) and to whether their jobs are in the formal economy. Fiscal and wage effects also depend on a number of broader economic factors which policymakers cannot anticipate, including future employment rates, technological developments, trade patterns, and so on.

Thus, while immigration generally is economically beneficial, it is not possible even in the abstract to identify an optimal level of inflows vis-à-vis the national economy. It is possible, however, to generalize about how the benefits of immigration vary as a function of immigrant characteristics:

- The economic benefits of immigration increase when immigrants have legal status because the exploitation of unauthorized

immigrants has a harmful effect on native wages, and unauthorized immigrants are less likely to make long-term economic investments in the United States and more likely to work off the books and avoid paying taxes.

- The economic benefits of immigration increase when immigrants have greater job skills, education, and other forms of human capital. The United States particularly benefits from high-skilled immigration, a resource which has sparked innovation in the past but is threatened by aggressive recruitment of immigrants by other industrialized states and by countries of origin such as China and India. The United States would also benefit from raising the skill level of relatively low-skilled immigrants even if they initially take jobs that require little formal training. Ensuring literacy and numeracy increases the likelihood that new entrants will find additional ways to contribute to the US economy and become fully integrated within US society.

- While family-based immigrants are less skilled, on average, than employment-based immigrants, access to more extensive social networks means that family-based migrants contribute more to the economy than their skill levels predict.

Meeting the unmet demand for visas: non-economic considerations

Economists agree that these economic impacts — positive or negative — are modest relative to the overall size of the US economy. Thus, optimal distribution rules also depend on non-economic considerations, which are harder to quantify:

- What is the value of allowing US citizens and legal residents to be reunited with their families within the United States? How should the implicit right of family reunification be balanced against the problem of visa scarcity? The current family-based preference system, which includes visa categories for the siblings and adult children of US citizens, is inherent-

ly prone to backlogs because these new immigrants, in turn, apply for family-based visas for their own nuclear and extended families.

- Immigration re-shapes the face of America. Many see value in the diversity wrought by migration, and immigrants are undeniably well represented among the elites in many fields, but some native-born Americans feel threatened by changing US demographics and culture.

An additional set of considerations involve national security and foreign policy implications:

- The United States has a security-based interest in minimizing the number of immigrants entering the United States illegally. More generally, good governance and support for the rule of law demand that immigration policy be brought into sync with structural pushes and pulls to minimize backlogs and reduce pressure for unauthorized labor flows.

- The United States also has a security-based interest in maximizing its ability to recruit the world's best and brightest minds, especially in math, science, engineering, and linguistics fields that have possible technology, military, and intelligence applications.

- Immigration policy helps define the United States in the eyes of the world. Relative openness sends a positive message about American values and creates important international linkages and opportunities for exchange. These diplomatic considerations are especially important with respect to US regional relations.

In sum, the United States generally benefits from immigration, but an optimal level cannot be pinpointed. For any level, however, the benefits increase to the extent that immigrants enjoy legal status, are educated and bring other forms of human capital, and have family connections in the United States, roughly in that order of importance. Given that less than 8 percent of LPR

visas are now distributed directly on the basis of job skills, these findings suggest that LPR selection criteria should place greater emphasis on immigrants' job skills, including perhaps by shifting visa distribution away from extended family migration, as recommended by the US Commission on Immigration Reform in 1994, or by combining family- and skills-based criteria into a single selection system.

The complexity of these issues also highlights the difficulty of reaching an informed consensus on numerical limits during the course of episodic and contentious legislative debates. Rather than negotiate the pros and cons of these competing numerical schemes, the nation would be better served if Congress established broad guidelines for the proper level of immigration flows and created an impartial regulatory agency to adjust quotas on an annual basis. In this way, numerical limits could be adjusted up or down in response to measurable criteria, including labor market indicators such as the unemployment and inflation rates or an index of wages across immigrant-dependent industries.

2. The labor immigration system is overly reliant on temporary nonimmigrants.

The US system of labor migration has gone full circle in the post-World War II period. The US-Mexican Bracero Programs oversaw the admission of 4.1 million "guest workers" between 1942 and 1964. The end of the Bracero Programs coincided with the 1965 amendments to the Immigration and Nationality Act that expanded LPR inflows and created the first labor-based LPR admissions criteria. Yet in the decades since, nonimmigrant visas have become an increasingly dominant element of the immigration system. Beginning in 1997, they have surpassed LPR admissions and stand today as the primary source of labor migration (see Figure 1).

A second trend is that temporary migration has become a standard path to permanent resettlement in the United States (see Figure 2). Indeed, the majority of all LPR visas issued in the last decade have gone to nonimmigrants already within the United States, rather than to new arrivals. As such, a large share of nonimmigrant visas function as de facto transitional visas. However, adjustment of status once in the United States is a highly uncertain process typically involving extensive paperwork and high legal fees. Moreover, a majority of nonimmigrant visas explicitly prohibit "dual intent" (i.e., both temporary and permanent migration) and formally require return migration. Some people with these visas — at even greater expense and with more uncertainty — find loopholes to legally adjust their status; others overstay their visas and become unauthorized immigrants. Thus, the nonimmigrant labor migration system lacks transparency, is highly inefficient, and in many cases undermines the rule of law.

Proposed reforms

As described above, all of the comprehensive proposals and the Bush plan would substantially expand nonimmigrant visa issuance, admitting an additional 350,000 or more temporary workers each year. The proposals differ in their approaches to the issue of dual intent and return migration:

- In the Cornyn-Kyl and Bush proposals, temporary worker program visas would be strictly temporary.
- The McCain-Kennedy, Hagel, and Specter proposals would create transitional visas. By allowing temporary workers to adjust to legal permanent status, the Hagel and Specter proposals would also facilitate adjustment of status for high-skilled workers and students on H-1B and F visas.

The merits of temporary vs. permanent migration

The trend toward nonimmigrant labor flows is understandable because temporary migration

Figure 1. Lawful Permanent Resident (LPR) Nonimmigrant Migration: Overall and Labor-Based, 1965 to 2004
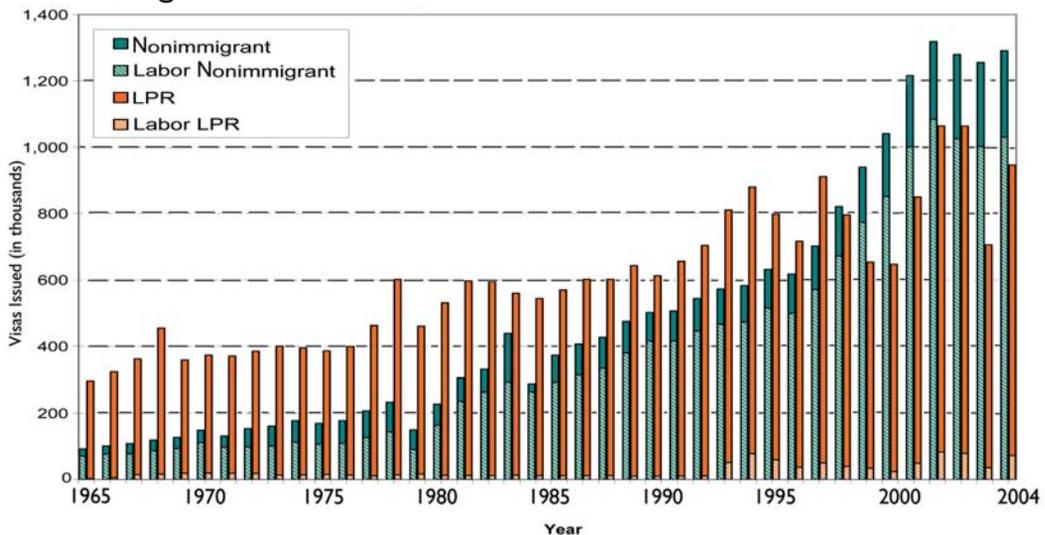
Note: Nonimmigrant migration numbers are estimates based on total nonimmigrant admissions, reported for all years by the INS and DHS and actual nonimmigrant visa issuance, reported by the State Department for 1992 to 2004 only. Reported nonimmigrant migration data are based on the ratio of visas issued to nonimmigrant admissions, weighted by type of nonimmigrant visa. For both visa types, labor migration numbers refer to primary visa-holders only.

Source: US Department of State, "Report of the Visa Office," 2004; US Department of Homeland Security, Yearbook of Immigration Statistics, 2004; US Immigration and Naturalization Service, Yearbook of Immigration Statistics, various years.

seems to offer the best of both worlds: the United States derives the benefits of migrants' economic contributions with little risk of demands on the welfare system and other public services or more permanent impacts on the nation's social or demographic picture.

Yet temporary migration also comes with social and economic costs relative to permanent inflows. Immigrants inevitably put down roots in their host states, so in some cases return migration divides families and communities. In addition, earning power increases over the course of an immigrant's lifetime, so long-term immigrants are likely to be more productive, pay more taxes, and consume more goods and services. Permanent immigrants are also more likely to

invest within the United States, buy a house, pursue additional educational opportunities, and so on. Conversely, nonimmigrants, who have short time horizons, are likely to spend their investment dollars in their countries of origin (i.e., send remittances), a trend which benefits those states, but damages the US current account and long-term growth.

The problem of coercive return migration
A second problem with relying on nonimmigrant labor flows is that an open society cannot effectively guarantee return migration. By their nature, temporary worker programs create social networks that facilitate illegal overstays: European "guest worker" programs, for example, experienced illegal overstay rates of between

Figure 2. Lawful Permanent Resident (LPR) Immigration: New Arrivals and Adjustments of Status, 1965 to 2004
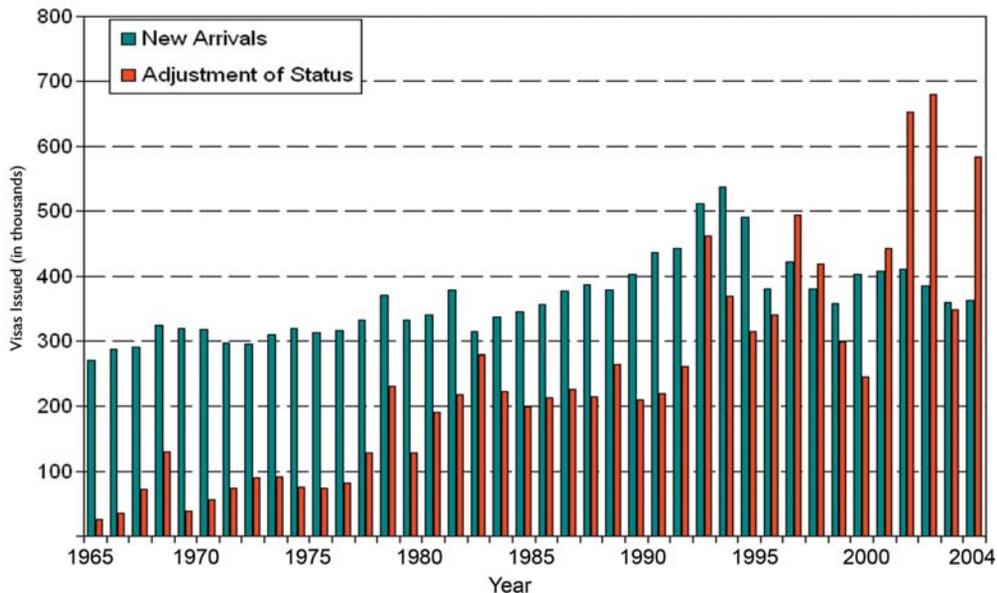
Note: Number of visas issued excludes individuals legalized under the Immigration Reform and Control Act (IRCA) of 1986.

Source: US Department of Homeland Security, *Yearbook of Immigration Statistics,* 2004; Immigration and Naturalization Service, *Yearbook of Immigration Statistics,* various years.

one-third and one-half. At the same time, temporary status is implicitly second-class status, and any meaningful efforts to enforce return migration — including, for example, many provisions found in the Cornyn-Kyl proposal — also promote discrimination and exploitation. Every major US government task force studying the issue since 1981 has explicitly opposed large-scale temporary work programs for precisely these reasons.

The McCain-Kennedy proposal has a more long-term strategy for promoting return migration: investment in Mexico and other migrant-sending states as the only viable strategy for reducing emigration pressures. Such programs also represent important opportunities for international cooperation between the United States and its neighbors. Yet these benefits are decid-

edly long-term and to date, sending countries have been significantly more interested in sustaining the flow of remittances from migration than in establishing programs or policies that attract return migration.

Given the advantages of permanent migration, and the problems associated with coercive return flows, the United States should consider making most nonimmigrant visas explicitly transitional, and should clarify and streamline the procedures through which nonimmigrants may adjust to LPR status. Structuring a temporary work program as transitional need not imply higher overall admissions. Rather, policymakers should design recruitment criteria and adjustment rules to promote successful immigrant integration: as more nonimmigrants adjust to LPR status, temporary flows could be reduced.

3. Regulations combating wage depression are cumbersome and ineffective.

Any expansion of the labor force has the potential to depress US wages, and immigrants are especially vulnerable to exploitation. Regulatory measures are therefore necessary to ensure that immigration does not harm US workers; but excessive regulation limits the economic benefits of immigration, and may cause employers to knowingly hire unauthorized immigrants.

The current system mainly seeks to prevent negative wage effects by requiring employers to complete a labor condition application (LCA) to prove that immigrants are not displacing native workers or depressing US wages. Applications are reviewed by state employment agencies and the Labor Department. These regulations substantially undermine the efficiency of labor-based immigration and offer limited benefits for US workers:

- The LCA requires employers to make a wage determination based on thirty-eight pages of instructions and a database including 500,000 lines of data.
- The LCA also requires employers to recruit native workers for at least thirty days prior to filing their applications. State and federal oversight agents separately review the recruitment efforts as well as the proposed terms of employment (i.e., wages and conditions to be offered). The process takes between two and sixty days for H visas, and up to *two years* for labor-based LPR visas. Employers must then wait several weeks to several months as US Citizenship and Immigration Services processes the visa applications. Prospective immigrants also wait up to two months to get appointments at US consulates abroad.
- Many employers "go through the motions" of LCA compliance with little effect on their labor market behavior. To the extent that dual labor markets exist, recruitment rules provide little benefit to US workers, who rarely take advantage of the opportunity to apply for "immigrant jobs." And in the absence of actual worksite enforcement, the LCA's wage requirements fail to protect against harmful wage effects.
- Even if LCA requirements were successfully enforced in every case, these regulations target well under half of all immigrants employed in the United States because they exclude family-based LPR immigrants and nonimmigrants on other-than-H visas. Many of them are equally vulnerable to exploitation at the worksite, which may also affect US workers negatively.

Proposed reforms

Reform proposals would continue to regulate labor migration through the LCA. All of the current proposals still would require that employers recruit US workers for fifteen to thirty days prior to completing an LCA. Proposals by McCain-Kennedy, Specter, Hagel, and Jackson Lee would also pursue four additional regulatory strategies, including:

- Specifying in greater detail the recruitment requirements, including targeting specific classes of native workers for employment and identifying specific hiring rules;
- Imposing qualitative restrictions on immigrant worker contracts to guard against exploitation (e.g., prohibiting the employment of immigrants as independent contractors or strikebreakers and restricting the role of foreign labor contractors);
- Providing additional protection against discrimination (e.g., adding anti-discrimination language, mandating equal wages for immigrant and US workers, and clarifying that immigrant workers would be covered by all US labor laws); and
- Creating new tools for enforcement and oversight of workplace regulations (e.g., changing the penalty structure of workplace violations and establishing oversight commissions to

monitor terms of employment and the effects of immigration on US workers).

Regulating recruitment vs. regulating the worksite

Basic distinctions exist between regulations aimed at the recruitment and hiring process and regulations aimed at the worksite itself. The strategies differ in important ways. First, compliance with recruitment rules is burdensome and economically inefficient, while compliance with wage and standards regulations is a distributive issue that does not inherently affect productivity. Recruitment rules slow the hiring process, and many employers find it difficult to adhere to fifteen- or thirty-day waiting periods on top of additional application procedures in an era of just-in-time production and in industries with unpredictable production needs (including agriculture, construction, and others with high levels of immigrant participation). In contrast, while the logic of competition and the drive for higher profits may compel employers to exploit immigrants and other vulnerable workers, universal enforcement of wages and standards would allow employers to pass costs to consumers with minimal impact on their own bottom lines and no negative effect on productivity.

Second, hiring decisions are inherently subjective, so proving that qualified native applicants were turned away is difficult, and the enforcement of recruitment regulations is problematic. Wage and standards regulations are easier to enforce because factual findings of compliance or non-compliance may be based on payroll audits, worksite visits, and employee interviews.

A third difference between these regulatory strategies is philosophical: regulation of recruitment is based on a logic of difference because it requires that different rules be applied to immigrants and natives, while regulation of wages and working conditions is based on a logic of uniformity because it strives to ensure common standards within a given industry. Anti-discrimination regulations and rules to ensure the applicability of US labor laws are particularly important ways to ensure that native and immigrant workers have similar workplace experiences.

For all of these reasons, policy should focus on universal protection of workers' wages and working conditions, rather than imposing immigrant-specific recruitment and hiring rules. Protecting wages and working conditions for immigrants and US workers would require substantial increases in funding for worksite enforcement, and should naturally fall to Department of Labor inspectors rather than Department of Homeland Security personnel.

The inefficient LCA regulatory process is a natural product of employer recruitment. Yet employers are inherently biased evaluators of market conditions, and job-based visas undermine immigrants' ability to bargain for higher wages. More fundamentally, case-by-case reviews of employer recruitment decisions are unrealistic in an immigrant labor market that absorbs a million new employees each year. Thus, as policymakers consider additional employment-based immigration, they should establish recruitment targets on the basis of flexible regional or sectoral economic criteria.

4. A large unauthorized population now resides within the United States.

Each of the previous problems — limited visa availability, excessive reliance on "temporary" immigration, and a cumbersome regulatory environment — have contributed (along with many other facilitating factors) to a fourth flaw in the current system: the residence of roughly 11 million unauthorized immigrants within the United States. Unauthorized immigrants limit the economic benefits of migration, weaken US national security, and undermine the rule of law. Any reform effort that fails to reduce the size of the

unauthorized population within the United States would be incomplete in a fundamental way.

Proposed reforms

As described above, reform proposals adopt a wide range of approaches to the problem of unauthorized immigrants now resident in the United States. Fundamentally, there are but three main alternatives:

- Relying on a combination of forced removals, increased worksite enforcement, and other punitive policies to ensure the departure of a large share of the unauthorized immigrants in the United States, as advocated by H.R. 4437. The Bush, Cornyn-Kyl, and Specter proposals, which encourage unauthorized immigrants to register (as temporary workers or in "Deferred Mandatory Departure" status), also assume that most unauthorized immigrants would eventually leave or be removed.
- Allowing a subset of unauthorized immigrants to obtain legal status as a function of their economic or social connections to the United States, and requiring others to depart. The Hagel and Jackson Lee proposals, which would limit adjustment opportunities to immigrants who have resided in the United States for five years or more, fall into this category.
- Subject to background checks, providing most unauthorized immigrants the opportunity to adjust to LPR status eventually. The McCain-Kennedy proposal adopts this approach.

"Amnesty" vs. enforced departure

Advocates of the departure/removal approach equate any adjustment of status for unauthorized immigrants with "amnesty." They argue that such adjustments undermine the rule of law by rewarding individuals who entered the United States illegally and signal to prospective migrants that they should enter the United States illegally now in the expectation of legal status in the future.

Still, the Department of Homeland Security concedes that enforcing the departure of millions of unauthorized immigrants now resident within the United States is well beyond the country's capacity. Many unauthorized immigrants are long-time US residents, and efforts to remove them would be expensive, as well as deeply disruptive to the US economy and their US citizen families and communities.

In practice, a removal campaign is likely to drive many unauthorized immigrants deeper underground. As a result, new enforcement efforts could exacerbate economic and security problems associated with unauthorized immigration, including by driving a wedge between immigrants and enforcement authorities and by depressing immigrant and US wages. A large-scale removal campaign would also put an enormous strain on US relations with Mexico and other Caribbean Basin states. Thus, even though a legalization program *would* reward individuals who entered out of status and attract some new immigrants, an enforcement-only alternative would be very costly and unlikely to succeed in any meaningful way.

Who should be eligible for legalization? All three legalization proposals (Hagel, Jackson Lee, and Kennedy-McCain) would impose limits on their programs to avoid attracting new unauthorized immigrants. Yet one lesson from the legalization provisions of the 1986 Immigration Reform and Control Act (IRCA) is that a limited legalization program offers limited benefits. Just as the IRCA's five-year cut-off left over two million immigrants out of status, so too would the Jackson Lee and Hagel proposals leave some 2.5 million immigrants out of status by imposing an arbitrary cut-off based on their time within the United States. The McCain-Kennedy proposal would allow all existing unauthorized immigrants to enter a legalization program at the time of passage — providing them an incentive to join the legal workforce — but would require individuals to earn legal residence through six additional years of formal employment, the payment of sig-

nificant adjustment fees, and the passage of security clearance and citizenship readiness tests. Regardless of these additional steps, any legalization program must be combined with extensive worksite and border enforcement to break the cycle of new inflows; and steps should be taken to limit the number of documents acceptable as proof of residence to prevent fraudulent claims.

Conclusion and Policy Recommendations

In sum, existing comprehensive reform proposals differ from enforcement-only approaches because they would expand and restructure LPR inflows, create a new temporary worker program, and recognize that existing unauthorized immigrants cannot be readily removed. Yet all existing reform proposals would make only modest changes to today's legal immigration system, and none would resolve the mismatch between visa supply and demand, the excessive reliance on

temporary nonimmigrants, the burdensome and ineffective regulatory environment for labor migration, or the large unauthorized population within the United States.

The core challenge for immigration reformers is to allocate visas and regulate admissions in a way that advances the US national interest in immigration. Three changes which go beyond current comprehensive reform proposals should be emphasized:

- Reformers should redefine selection rules to weight family and skills criteria more evenly;
- Reformers should guarantee that nonimmigrant visas include clear paths to LPR status; and
- Reformers should focus enforcement efforts on strengthening labor rights at the workplace.

Without these changes, "comprehensive" immigration reform will leave grave shortcomings in the current system unaddressed.

About the Author

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The Migration Policy Institute (MPI) is an independent, non-partisan, non-profit think tank dedicated to the study of the movement of people worldwide. The institute provides analysis, development, and evaluation of migration and refugee policies at the local, national, and international levels. It aims to meet the rising demand for pragmatic responses to the challenges and opportunities that migration presents in an ever more integrated world. MPI produces the Migration Information Source web site, at www.migrationinformation.org.

This report was commissioned as part of MPI's Independent Task Force on Immigration and America's Future. The task force is a bipartisan panel of prominent leaders from key sectors concerned with immigration, which aims to generate sound information and workable policy ideas.

The task force's work focuses on four major policy challenges:

- The growing unauthorized immigrant population
- Immigration enforcement and security requirements
- Labor markets and the legal immigration system
- Integrating immigrants into American society

The panel's series of reports and policy briefs will lead to a comprehensive set of recommendations in 2006.

Former Senator Spencer Abraham (R-MI) and former Congressman Lee Hamilton (D-IN) serve as co-chairs, and the task force's work is directed by MPI Senior Fellow Doris Meissner, the former Commissioner of the Immigration and Naturalization Service.

The approximately 25 task force members include high-ranking members of Congress who are involved in shaping legislation; leaders from key business, labor and immigrant groups; and public policy and immigration experts. MPI, a nonpartisan think tank dedicated to the analysis of the movement of people worldwide, is partnering with Manhattan Institute and the Woodrow Wilson International Center for Scholars for this project.

For more information on the Independent Task Force on Immigration and America's Future, please visit:

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