Center for Immigration Studies

The Illusionary Allure of Immigration "Grand Bargains"

An Analysis of Blue Ribbon Task Forces

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December 2010

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About the Center

The Center for Immigration Studies, founded in 1985, is a non-profit, non-partisan research organization in Washington, D.C., that examines and critiques the impact of immigration on the United States. It provides a variety of services for policymakers, journalists, and academics, including an e-mail news service, a *Backgrounder* series, and other publications, congressional testimony, and public briefings.

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He has published over 100 articles and 16 books in the fields of presidential psychology and political leadership, foreign policy decision-making and American national security, and immigration and American national identity.

His book on the Clinton presidency, *High Hopes: The Clinton Presidency and the Politics of Ambition*, won the 1997 American Political Science Association's Richard E. Neustadt Award for the best book published on the presidency. It was also the winner in 1998 of the National Association for the Advancement of Psychoanalysis' Gradiva Award for the best published work in the category of biography. He has also written about the George W. Bush Presidency (*In his Father's Shadow: The Transformations of George W. Bush*) and the psychology of American national security policy (*Understanding the Bush Doctrine: Psychology and Strategy in an Age of Terrorism*).

Among his books in the area of immigration and American national identity are: *One America?: Political Leadership, National Identity, and the Dilemmas of Diversity; America's Second Civil War: Dispatches From the Political Center; The 50% American: Immigration and National Identity in an Age of Terrorism*; and, most recently, *Noncitizen Voting and American Democracy*.

He has testified before Congress on matters of dual citizenship and immigrant integration into the American national community and has written several other reports for the Center including:

- "The Debate Over Non-Citizen Voting: A Primer," Washington, D.C. Center for Immigration Studies, 2008. (http://www.cis.org/articles/2008/back408.pdf)

- "Becoming an American: The Hidden Core of the Immigration Debate," Washington, D.C.: Center for Immigration Studies, 2007. (http://www.cis.org/articles/2007/back107.pdf)

- *Reforming Dual Citizenship in the United States: Integrating Immigrants into the American National Community*, Washington D.C., Center for Immigration Studies, 2005. (http://www.cis.org/articles/2005/dualcitizenship.pdf)

- *Dual Citizenship and American National Identity*, Washington, D.C.: Center for Immigration Studies, 2001. (http://www.cis.org/articles/2001/paper20/renshondual.pdf)

- "Dual Citizens in America: An Issue of Vast Proportions and Broad Significance," Washington, D.C.: Center for Immigration Studies, 2000. (http://www.cis.org/articles/2000/back700.pdf)

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Summary

After the midterm elections, momentum for "comprehensive immigration reform" has slowed considerably, allowing us time to take a step back from attempts to push another enormously complex piece of legislation through Congress without sufficient consideration. Yet the president has repeatedly vowed to pursue "comprehensive U.S. immigration reform" with a view to enacting legislation that would provide a "pathway to citizenship" for 10-12 million illegal immigrants in the United States. That effort when it begins again, and it is just a matter of time before it does so, will be shaped in part by the deliberations and recommendations of three blue ribbon immigration panels that have recently published their reports. The three task forces whose immigration reports will be examined were convened by the Migration Policy Institute, the Council on Foreign Relations, and jointly by the Brookings Institution and Duke University. This three-part analysis examines the issues they have debated, the recommendations they have made, and the relationship of those issues and recommendations to the ongoing immigration debate that has been gathering political steam for the last five years.

Part 1 will explore the nature of these blue ribbon task forces and the meaning of the "comprehensive immigration reform" that they advocate. Part 2 deals with immigration ceilings, family preferences, the real meaning of diversity, and their implications for the task forces' proposals. Part 3 addresses the desire expressed by all three task forces to remove immigration policy making from the political process, as well as the difficulties of implementation after legislation is signed, including the nature of the penalties imposed on legalization applicants.

Part 1: An Analysis of Blue Ribbon Task Forces

Abstract: *In this, the first of our three-part analysis, we examine the nature of three blue-ribbon task forces. We focus on the impact of the institutional settings in which they took place, their expert participants, the issues examined, and the range of options that were considered. Being expert does not mean that invited participants had no preferred understandings, assumptions, frames of reference, or policy preferences. We trace the impact of these assumptions and inferences through a consideration of the many policy areas that the task forces take up, and some that they avoided.*

We also explore the meaning of "comprehensive reform" and assess the premises underlying proposed immigration grand bargains. Imbalances between actual workplace enforcement capacities and the more immediate change in legal status for current illegal immigrants that would be a part of any grand bargain, would appear to skew relative benefits to each side in the bargain in favor of legalization at the expense of enforcement.

We also examine the premise that legalization is necessary, a consensual view of all three task forces. In doing so we examine the differences between attrition strategies alone, the false option of mass deportation, and their relationship to the premises of the legalization-enforcement grand bargain. We end this section with an analysis of the question: Why not enforcement first?

After the midterm elections momentum for "comprehensive immigration reform" has slowed considerably, allowing us time to take a step back from attempts to push another enormously complex piece of legislation through Congress without sufficient consideration. The president has vowed to pursue "comprehensive U.S. immigration reform" with a view to enacting legislation that would provide a "pathway to citizenship" for 10-12 million illegal immigrants in the United States."[1] It is a likely move to increase Hispanic support before his 2012 reelection effort.

How politically feasible that effort is in the aftermath of the midterm elections remains an open question. Democrats lost control of the House and their margins in the Senate were substantially reduced. The president's support also has declined, and support for his policies and agenda have declined even further.[2] That is one reason why some reports have indicated that immigration reform proposals would take a "back seat."[3]

Yet in an address to a liberal policy group in Washington, D.C., Secretary of Homeland Security Janet Napolitano had said that the administration would definitely begin the push for immigration reform early in 2010.[4] And, at the start of this year, White House Deputy Chief of Staff Jim Messina and political director Patrick Gaspard, "privately have assured Latino activists that the president will back legislation next year to provide a path to citizenship for the estimated 12 million illegal immigrants living in the United States."[5] The president himself in his State of the Union Address said, "we should continue the work of fixing our broken immigration system."[6] How much effort the president will exert and how much support he will have even from his own party for another major and controversial initiative after the midterm elections are unclear.

"Comprehensive" reform premised on a legalization/enforcement "grand bargain" raises the question of whether immigration policy reform is best approached in a comprehensive or more limited manner. Given the many elements that are part of immigration "reform," it is important to see how those parts fit together and to make some assessment of their relative importance. Given that analysis, which we undertake here, it might well be possible to adopt a focused incremental rather than a "comprehensive" approach and still produce a great deal of needed and desirable immigration reform.

"Comprehensive" Reform And "Grand Bargains"

What President Obama means by the term "comprehensive immigration" is worth noting. It certainly includes the coupling of border and other enforcement strategies with support for some form of legalization process for the estimated 10-12 million immigrants living here in violation of immigration laws. Getting both done in the same overarching legislation is the essence of what many view as the essential "grand bargain" underlying "comprehensive" immigration reform. However, the two terms refer to distinct immigration issue areas.

Grand bargains are premised on the assumption that there are diametrically opposed policy positions that can be reconciled through a political give-and-take

process. It requires each side of the conflict, while not necessarily acceding to the legitimacy of the other side's policy preferences, to at least accept them for purposes of reaching a deal.[7]

Yet, real comprehensive reform involves quite a bit more than coupling enforcement and legalization. It involves such matters as the numerical ceilings on the number of green cards issued each year and the relative numbers assigned to the categories that compose it. Will the numbers go up, down, or remain the same, and if they remain the same, what will be considered the baseline? Will expansive versions of family membership continue be the primary basis on which green cards are allotted? Or will family reunification be restricted to married spouses and minor children of legal immigrants or even of just those legal immigrants who have become citizens? Will more emphasis be given to so-called "selective immigration" that favors immigrants with certain levels of education, skill, or language facility?

All of these are major, complex, and difficult issues and they have important implications for any prospective grand bargain. Even if it is possible to reach a grand compromise between enforcement and legalization, the other issues that make up "comprehensive reform" can be decided in such way that they undercut the premises of the grand bargain. For example, reaching a grand bargain without reforming the family preference system now in place will simply result in millions of additional immigrants entering the country in successive years. Whether that is desirable is a discussion that this county has not yet had.

The goal of an enforcement-legalization grand bargain is, in the words of the recent Migration Policy Institute immigration report, to "'wipe the slate clean' for effective immigration control."[8] The usefulness of this "wipe the slate clean" metaphor, however, is premised on the assumption that both sides can deliver on their promises; legalization can and will take place in a manner that does not undercut the premises and promises that were the basis of the bargain, and that the technical elements needed to implement workplace verification are available and ready to be put into service, unlike what happened with the 1986 grand bargain that failed to deliver on its promise of workplace verification. As will be documented shortly, neither element of the proposed grand bargain is ready to bear the political and policy weight it is being asked to shoulder.

Blue Ribbon Immigration Task Forces

Calls for grand bargains and comprehensive immigration reform arrive heralded by the task force reports of three blue ribbon immigration panels. It has been about 15 years since the prescient, comprehensive, and thoughtful reports[9] of the U.S. Commission on Immigration Reform chaired by the late Barbara Jordan (D-Texas) were released and almost totally ignored. (And 15 years before that, Rev. Theodore Hesburgh's Select Commission on Immigration and Refugee Policy issued its own report.)

There is a doctoral thesis waiting to be written, if it has not already been done, that could be subtitled: "The impact of blue ribbon commissions on policy development." A cynic might respond that the primary title of such a work might reasonably be: "Dead End." While that title is probably too harsh, it does reflect the fact that such commissions have a mixed record in effectively analyzing the subjects under deliberation and an even worse record in getting their recommendations, even when sensible, implemented.[10]

Still, it is also possible to see the results of such commissions through a larger lens. Of course, they give presidents and Congress the appearance of doing something without necessarily committing them to any particular action. Yet they can also gather up and reflect the conventional wisdom and in some cases, like the Jordan Commission, actually develop innovative thinking to present a well-reasoned, well-researched alternative to the conventional wisdom.

So, for example, among the Jordan Commission's innovative thinking was a recommendation of a ceiling of about 550,000 immigrants per year as a total cap, a narrowing of "first priority" family reunification to spouses and minor children of American citizens with other family members to be given visas if they do not violate the proposed ceiling, a transition to a more skill-based admission policy, developing and implementing a coordinated policy of Americanization,[11] and development and phasing in of a computerized workplace verification system.[12] More than a decade later, these important ideas underlie much of the analysis and a number of the proposals in the three new blue ribbon task forces under discussion.

And herein lies a lesson about the usefulness of neglected commission recommendations. They can establish a policy marker for new ideas or the distillation of conventional wisdom. And they can find renewed life in new political and policy circumstances, as is the case for the three task forces analyzed below. The question is whether they will be any more successful as a matter of adapted policy, and whether the political process will trump the results of these task forces' deliberative recommendations.

Three New Task Forces And Their Reports

Nearly a quarter century after the disastrous 1986 grand bargain that legalized almost three million illegal immigrants and their extended families, but failed to stop and most likely increased the flow of illegal immigrants, three new blue ribbon panels have met and wrestled with the same difficult and contentious problems. One is the task force sponsored by the Migration Policy Institute in 2006 (hereinafter MPI report).[13] Spencer Abraham, former Secretary of Energy and U. S. senator from Michigan, and Lee Hamilton, former congressman from Indiana, chaired it. The Council on Foreign Relations organized the next major immigration task force and its report was issued in July 2009 (hereafter CFR report).[14] Former Florida Gov. Jeb Bush and Thomas F. "Mack" McLarty III, former White House Chief of Staff to Bill Clinton, chaired it. And, finally, there was the Brookings-Duke task force that released its report in October 2009.[15] Its major conveners were three well-known and respected academics who, if they lack the political experience and visibility of other immigration task force chairs, have established themselves as respected voices in their academic discipline (political science). One served as a respected advisor to the Clinton administration, and two have written deservedly well-received books on immigration.[16]

The standard operating procedure of these blue ribbon efforts is now fairly well established. They are sponsored by one of the better-known think tanks and chaired by establishment figures. The task force sponsors then appoint an executive director, ordinarily associated with the primary sponsoring institution. A group of notables are then recruited to discuss the issues, a report is issued, with a few brief dissents to specific aspects of the common ground (but only very rarely the common ground itself), and a press conference is called to announce and discuss it.

Institutional Premises, Membership, and Recommendations

In assessing the findings of any blue ribbon task force it is important to keep in mind that the institutional setting, selection criterion, and deliberation process can influence the discussion and results in varied and sometimes subtle ways. For example, a Brookings Institution analysis on the outlook for immigration reform released in July 2009, as its task force was nearing completion, noted that reports from other commission or task force efforts had reached different conclusions based in part on their organization perspectives and preferences. It did not mention that this might be true as well for their institution's report.

So, on the issue of how to define nuclear families for purposes of family immigration quotas, the Brookings-Duke report departs somewhat from the suggestions of the Jordan Commission, defining it in terms of the spouse and minor children of *legal immigrants*,[17] not citizens. Regarding "temporary workers," it also "tilts strongly toward policies premised on permanent residency leading to citizenship."[18] Presumably, these new immigrants too would benefit from family preferences, while at the same time representing a built-in structural multiplier for the overall number of immigrants to the United States each year.

At the same time, a separate Brookings analysis of immigration reform prospects noted that, "Attitudes toward this family-centered policy vary considerably. Groups — such as the MPI Task Force — *that are broadly sympathetic to expansive immigration policies* tend to favor the status quo regarding family reunification."[19] The status quo is an expansive definition that includes parents, adult siblings and their children, and the adult sons and daughters of legal immigrants and *their* families.

To take another example, the director of the CFR immigration task force, Edward Alden, published a book that was highly critical of the dramatic steps the government took immediately after 9/11 to secure America's borders because innocents, especially if young, male, and Muslim were put through extra layers of security.[20] Worse, in his view, these security steps made it more difficult to attract and keep the talented foreigners on which he feels the country depends. The latter assumption literally permeates the CFR report.

All of the task forces had their own ideas about what constitutes balance in forming their own membership. The MPI and CFR task forces included members of national immigration advocacy groups, but did not address what specific kinds of balance they sought or achieved. The Brookings-Duke task force expressed some pride in the fact that it did not include persons from advocacy groups; it "very deliberately included Democrats and Republicans, liberals and conservatives, immigration expansionists, and immigration restrictionists."[21] Apparently, a restrictionist was one who favored lowering immigration levels, and the conveners estimate that five or six of their members favored reducing immigration, five or six favored increasing it and eight to 10 were open either way.[22] Yet, only one of the 20 formal members of that task force felt strongly enough to register an objection to what was clearly (19 out of 20) a strong pro-legalization consensus. Moreover, all the members signed on to pro-

posing a figure of 1.1 million new immigrants per year that was reached by taking an average of the last five years of overall immigration numbers, numbers that were at the very high end of immigration figures for the entire decade.

These observations point to an unacknowledged but important issue. Task forces may be "diverse" in many ways, but they tend to operate within a narrow policy band. Looking over the list of participants in all three task forces, it was difficult to see anyone that could be identified with real restrictionist positions. Moreover, not one task force seriously discussed ending the policy of encouraging mass immigration. Nor did any of the task forces consider an option suggested by some that the government institute a moratorium on high levels of immigration until the country has assimilated the millions of immigrants it had already taken in and strengthened the infrastructure and functioning of the immigration service. I don't mention theses options because I think they are necessarily either preferable or possible, but rather to make the point that what is excluded from consideration has an important effect on what is considered, and on the consensus that is finally reached.

These examples simply acknowledge what those in the field know, mainly that every think tank that covers immigration has a stance towards many of immigration policy's most basic issues and that these preferences are, of necessity, reflected in the underlying mandate of the various commissions, the people they recruit to take part in their efforts, and the likely shape of their final recommendations. Even diverse perspectives operate within a band of policy options.

What's New?

Unlike the Jordan Commission and the CFR and MPI immigration task force reports, the Brookings-Duke task force "did not undertake new research, but rather built on and explored the implications of the extensive work of others."[23] As a result, their recommendations closely resemble suggestions made by prior task forces and their report is a substantively thinner document with less analytic development of the issues and few references.

They recommended that an Office of New Americans be established to focus and coordinate efforts directed at immigrant integration.[24] The Jordan,[25] CFR,[26] and MPI[27] task forces did as well. And of course in June 2006, President George W. Bush set up a Task Force on New Americans[28] that issued a major report on the subject.[29]

The Brookings-Duke task force also recommended the creation of a quasi-governmental "Independent Standing Commission on Immigration" charged with, among other things, setting ceilings every two years for the numbers of immigrants for permanent and temporary admissions categories.[30] This mirrors the suggestion made by the MPI report in 2006[31] and the CFR report in 2009.[32] We will take up this suggestion in more detail later in the analysis.

The Brookings-Duke task force suggests a strong tilt to admitting more skilled immigrants given the emergence of an increasingly skill-based economy.[33] The Jordan Commission had recommended the same skills tilt in admissions,[34] and the recent CFR report concurs.[35] Just how this consensual and desirable policy shift would be brought about is, as we shall see, a difficult question. And the chief difficulty hinges on the question of what to do about the current, and future, policies toward family reunification.

The question of family reunification as the cornerstone of American immigration policy was one subject on which the three reports did not reach agreement. The current definition of family is quite wide and, as a result, "For the past half century, most new immigrants coming to the United States have been family members of legal immigrants or U.S. citizens. In 2008, nearly 700,000 people acquired green cards on the basis of family ties."[36]

The Brookings-Duke report recommends narrowing family reunification categories in order to create help create the numerical space for a more skill-based policy.[37] The Jordan Commission suggested a three-tiered system in 1977.[38] The MPI report noted that its members could only agree on the provision to exempt spouses and minor children of permanent residents from any numerical limitations.[39] This is the path taken by the 2009 immigration reform bill introduced by Rep. Luis V. Gutierrez (D-Ill.) that reclassifies the spouses, minor children, and parents of Lawful Permanent Residents (LPRs) as "immediate family members," thus removing any numerical caps and quotas from this group.[40] If enacted, this would, of course, result in substantially increased overall immigration unless accompanied by lowering of the overall immigration numbers each year.

The CFR report could not find a "clear consensus on whether it is necessary to further restrict family immigration by family members outside immediate family and if so how it should best be done." However, they further suggested that, "it would be prudent to reexamine the continued viability of the current categories of the siblings of U.S. citizens."[41] They themselves make no specific recommendations on this matter and so it is difficult to know just what, if anything, they have in mind. Yet, it is clear that expansive or narrow definitions of family preferences have, as we shall see, important implications for overall immigration numbers, and other critical issues as well.

Is Legalization Necessary?

A key feature of all three reports is the assumption that it is necessary, even mandatory, to legalize the status of America's estimated 10-12 million illegal immigrants. The reasons for this are worth quoting in full since they get to the heart of the immigration debate. The Brookings-Duke report says:

> "Even if sending 12 million people home were feasible, it would be a catastrophic choice — enormously expensive, diplomatically disastrous, and hugely costly in human terms. Neighborhoods would be torn apart, families would be separated, and a new and sorry chapter in American race relations would be written. Less draconian measures enforced by officials at all levels of government to encourage illegal immigrants to leave on their own were also examined by our Roundtable, and none passed muster. Some of us rejected such "attrition through enforcement" as offensive to our values. Others thought that because such a strategy would unlikely to be rigorously or consistently implemented, it would therefore ultimately be ineffective."[42]

The CFR report takes a similar tack:

> "Practically, the difficulties in deporting so many illegal immigrants are extraordinary. Although not impossible, by any measure the undertaking would be extremely costly. For all the resources already been dedicated [sic] to increasing the number of removals, and the weak economy that has encouraged some to leave on their own, there appears to have been only a small decline in the number of illegal migrants living in the United States. Given both the expense and further damage mass deportation would do to America's economy and its reputation as a nation of immigrants, such an effort would not be in the country's interest. The United States has long been a country that believes in second chances. The alternative — to break up families and wrench people away from communities where they have lived for many years, and in some cases even decades — is morally unacceptable."[43]

These two quotes go to the heart of the immigration debate in several crucial ways. First they lay out the stark differences between *deportation* and *attrition*. The deportation option might be characterized as the "round them up and ship them home" option. It is, as critics contend, draconian, almost impossible to effectively implement, and certain to damage America's standing as a liberal democracy. And they are right. Moreover the mass deportation option would be tailor-made for repeated wrenching public scenes that are emotionally and political unsustainable, and unlikely to be supported by other than a small minority of Americans. Pro-legalization forces could be counted on to publicize traumatic scenes and they would have many to choose from.

There is however, a paradox here. The CFR report considers "tough," "fair," "effective," and "mandatory" workplace enforcement a "linchpin of a strategy to reduce illegal immigration."[44] The Brookings-Duke report concurs.[45] Yet neither report considers the possibility that that effective enforcement might well preclude any need for mass deportations.

Workplace Verification and Attrition

More than 20 years ago, the Jordan Commission argued that, "reducing the employment magnet is the linchpin of a comprehensive strategy to reduce illegal immigration" and that a "better system for verifying work authorization is central to the effective enforcement of employer sanctions."[46] This is the basis of a strategy — attrition — that reduces illegal immigration by systematically and effectively enforcing workplace verification requirements. It works by denying unauthorized immigrants access to jobs and in doing so undercuts their ability to live in the United States. Paradoxically, effective workplace enforcement is both the basis of an attrition strategy and the essential requirement for an enforcement/legalization grand bargain. *Yet that very same strategy is depreciated if it is the basis of attrition, but lauded if it is coupled with legalization*.

The Brookings-Duke report says that "some of us" (that presumably includes the conveners who authored the report) considered and rejected an attrition strategy because it "offended our values." It is unclear just what those values are. It is hard to believe that they do not include enforcing immigration laws, since that is precisely what the task force proposed to do as part of its grand bargain.

The second reason given for not supporting an attrition strategy is that it "would be unlikely to be rigorously or consistently implemented, it would therefore be ultimately ineffective." This raises the obvious question of why, if an enforcement strategy would not be rigorously, consistently, or effectively implemented before legalization was enacted, it would be any more rigorously enforced *after* illegal immigrants were legalized.

And this leads to a final question. Why are the difficult consequences of implementing an enforcement/attrition strategy in the context of a legalization grand bargain any more inherently moral and less painful than doing so without one? We will, in the next section of this analysis, present detailed evidence on the readiness of current procedures to shoulder the responsibility of truly effective workplace verification. To briefly anticipate our evidence, those procedures are not yet able to fulfill the responsibilities that grand bargain advocates are ready to cede to them. As a result, for the foreseeable future, without the deterrent of effective workplace verification, the same incentives for economic mobility and political freedom would still exist for those who are not authorized to live in the United States legally. The same groups, and their political allies, who want to expand immigration opportunities would still gear up to press their case. A number of immigrants would remain illegal, find jobs, but be forced to live "in the shadows" recreating in fact, even if not at first in degree, the same issues. Those caught would be deported, breaking up families and wrenching people away from their communities, as the CFR report phrases it.[47]

Formulated in this way, the legitimacy calculus of the proposed grand bargain appears to reflect a narrow political feasibility, not a convincing moral or policy argument. Yet, aside from the understandable, but perhaps unnecessary, effort to get political support for real enforcement measures through the incentive of legalization, the actual policies that underlie an attrition strategy are exactly the same. For this reason, the Brookings-Duke report's terse comment that it looked at attrition strategies but none "passed muster" is insufficient and unconvincing.

Why didn't attrition "pass muster"? As noted, some found that strategy "offensive to our values," but the report never made clear just what those values were. If the moral legitimacy of enforcement can only be sustained because it has also made available to illegal immigrants an opportunity to "earn" legalization through some form of redemptive restitution like paying a fine or enrolling in an English language course, what is to keep any continuing effort at enforcement from leaking legitimacy over time?

And, if there is no real difference between the legitimacy and effectiveness of an enforcement attrition strategy with or without legalization is the latter, why not try an enforcement first strategy to begin?

Workplace Verification Issues

A key feature of the all three reports is that they accept workplace verification, which the Jordan Commission established many years ago as "the linchpin of a comprehensive strategy to reduce illegal immigration."[48] The Brookings-Duke report says, "we accept the principle of *moving toward mandatory* and meaningful workplace verification."[49] Similarly, it argues for the "Successful expansion of E-Verify to screen *all* new hires."[50] Moreover, because that system cannot detect the use of false documents, their task force also supports the development and use of a biometric data card.[51] The CFR report also supports "stringent enforcement"[52] and "tough, fair, and effective enforcement."[53] They too support a "workable and reliable biometric electronic verification system."[54]

One reason why strong effective workplace verification measures are so crucial is found in the CFR report. It says that, "The strongest argument against some form of earned legalization is that it will simply set the United States up for further illegal immigration and another round of legalization one or two or three decades from now." They further emphatically state: "*there is no question that earned legalization creates an incentive for others to try and enter the United States illegally in the hope that they too will be allowed to stay by future act of legalization*."[55]

It happened before. The American public was told that the 1986 amnesty was a necessary part of a necessary tradeoff that would not be repeated, because there would be no need to do so. Then, the 1986 Immigration and Reform Control Act (IRCA) process legalized almost three million illegal immigrants.[56] It was also a grand bargain, and was constructed by linking enforcement with legalization. Yet its enforcement mechanism contained a giant loophole. Employers needed only to ask about, but not verify in any meaningful way, the immigration status of the workers they hired. As a result, the legalization part of the bargain resulted in the gains that supporters had sought, but the enforcement part of the bargain was, in the words of the Brookings-Duke report, "a charade."[57] Not only did the grand bargain fail for those who had compromised on the basis of promises for effective enforcement, it did something far worse; it corroded trust in the government's competence and integrity. As the Brookings-Duke report notes, "It would be difficult to understate the legacy of distrust and anger that has accumulated over decades of controversy about this topic."[58]

Now the country is being asked to accept a second version of the same basic grand compromise, this time allowing legalization of up to 12 million persons here in violation of our immigration laws. The CFR report warns, "the experience of 1986 serves as a stark warning."[59]

The fact that all three blue ribbon panels endorse strong workplace enforcement measures, the use of electronic worker verification systems like E-Verify[60] coupled with a biometric data card[61] sounds promising. But there is a major problem. Neither system is ready to shoulder the responsibilities that the proposals would put on it.

The Brookings-Duke report calls the E-Verify system "promising." They add that, "Congress should authorize and fund simultaneously a mandatory workplace verification system," and further that it should "require the Government Accountability Office (GAO) to certify when the workplace verification system has reached an agreed-upon level of use and effectiveness."[62] The MPI report said, "The accuracy of the system must be dramatically improved if it is to be reliable."[63] And Sen. Charles Schumer (D-N.Y.), one of the senior Senate members hoping to broker new immigration legislation has said, "The current E-Verify system is an example of a half-hearted and flawed system."[64] He is one of the principle authors of the 2010 Democratic immigration proposal and strongly suggests the development of a new biometric identification system labeled, ironically given the government's past success, BELIEVE (Biometric Enrollment, Locally-stored Information, and Electronic Verification of Employment).[65]

How far does E-Verify have to go before it is dramatically improved enough to be reliable? Very far. A study by an independent contractor for the DHS put the "'inaccuracy rate for unauthorized workers' at about 54 percent."[66] The reports themselves, one in 2009 and a follow-up in 2010, present detailed evidence of the systems' vulnerabilities.[67] The 2010 follow-up analysis notes that, "E-Verify accurately detects the status of unauthorized workers *almost half of the time*."

Efforts to reform the system have had mixed results. That report notes that, "The E-Verify program currently includes a Photo Tool that limits identity fraud" but then goes on to note that, "Westat recommends discontinuing the Photo Tool. USCIS disagrees with this recommendation.[68]

To sum up: The workplace verification system isn't ready yet for the enormous responsibilities that would be placed on it and we are discussing here only the national E-verification system, not the development of the biometric identity card. Indeed, policy institutes are already outlining the needs for "the next generation of E-Verify."[69] And just to add to the complexities of the as-yet not fully viable workplace enforcement system, Rep. Samuel Johnson (R-Texas) and a bi-partisan group of other house members have introduced legislation for a new system to supersede E-Verify, "The New Employee Verification Act of 2009."[70] This bill "amends the Immigration and Nationality Act (INA) to require employers to verify employee identification and employment eligibility under the Electronic Employment Verification System (EEVS) or the Secure Employment Eligibility Verification System (SEEVS) (as established by this Act)."[71]

There are really three separate and equally major and complex issues here. First, there is the very basic problem of false positives (matches that don't catch document fraud). Biometric data verification is one way to defeat document fraud and the issue of false positives, but it will take years to develop and refine such a system for widespread use and there are substantial civil liberties and political issues that will have to be worked through and doubtlessly litigated. In the meantime, any legalization would have long since taken effect.

Second, there are "The problems that need to be corrected [which] include delayed entry of data reflecting admission or status changes, data entry errors, the ability of individuals to view and correct their records, and alternative spelling or word order of foreign names."[72] It will take time and money to correct these issues, but assuming that could be done, there is a third equally large problem.

As it now stands the E-Verify system is voluntary and the number of businesses that use it is minuscule (though it does account for a significant share of new hires). The MPI reports that, "Only about 10,100 employers have registered to use the electronic verification provided by the Basic Pilot [the precursor to E-Verify] and the program is actively used by more than 5,000 employers — less than one-tenth of 1 percent of all U.S. employers. The scale-up that is required will have to reach more than eight million employers and 144 million workers, and process more than 50 million hiring decisions each year."[73] This would be a daunting task even assuming large-scale funding and institutional competence.

True, the U.S. government now requires federal contractors to use E-Verify and estimates that there are more than 148,000 participating employers using it.[74] A 2009 news story put that number at 169,000[75] and a 2010 Westat study conducted for the Department of Homeland Security put the number at 180,000.[76] There are approximately eight million employers in the United States and so even using the larger figures, E-Verify covers about 2 percent of American business. It is easy to see that this is an enormous problem with the support of a grand legalization-enforcement bargain by all three blue ribbon immigration task forces as well as the political underpinnings of any more general "comprehensive immigration reform."

The new "grand bargain" in whatever specific form it takes promises, again, to couple the legalization

of approximately 10-12 million illegal immigrants, over eight million more than the ill-fated 1986 IRCA legalization, with "stringent enforcement."[77] It promises, again, to make high levels of illegal immigration a problem of the past, this time by using a mandatory and effective national system of electronic workplace verification.

The essential problem is that the current system is neither mandatory nor effective, and will not be so for years, yet "comprehensive reform" advocates wish to press ahead with legalization. It is understandable that they do; but whether enforcement advocates would realize *their* policy goals as part of such a bargain is far from clear.

Why Enforcement Is Key: The Enormous Future Pool of Illegal Immigrants

In general, migration flows are affected by economic circumstances. Therefore it is to be expected that there is some evidence that the flow of illegal immigrants into the United States has declined, as has the number of less-educated young Hispanics living in the country.[78] More effective border enforcement and the economic downtown are the chief explanations for these trends. Yet not every major study has found that the illegal population of the United States is declining. A study by the Pew Hispanic Center found, using data from both the United States and Mexico, that in spite of the economic downtown, there is "no evidence of an increase during this period in the number of Mexican-born migrants returning home from the United States."[79]

Eventually however, a recovering economy will again make the United States as attractive as it has traditionally been. Indeed, even with a small uptick in the economy, there is evidence that illegal immigration flows are beginning to build again.[80] And by all evidence, the United States is an enormously attractive destination for immigrants, both legal and illegal. We know that illegal immigration will be a continuing issue not only because of the evidence of past migration flows from South to North, but also because of several recent surveys, one from Pew and the other two from Gallup.

The first survey, noted above, looked into whether the economic downturn had resulted in more immigrants leaving the United States. The answer to that question was "no."

The second major Pew study surveyed a large number of Mexicans in 2009.[81] Of course Mexican immigrants are not the only immigrants to the United States. Yet, it is also true that immigrants from Mexico account for the largest group of foreign-born in the United States (32 percent) and of Hispanic immigrants (66 percent). They also represent an estimated 66 percent (seven million) of the country's 10-12 million illegal immigrants.[82]

Here are some of the Pew findings: Almost six out of 10 Mexican respondents say that those who move to the United States have a better life (p. 3) and further a substantial minority of Mexicans say that if they had the means and opportunity to go live in the United States they would do so (33 percent), and more than half of those (18 percent) who would migrate if they had the chance say they would do so *without authorization* (p. 3).

The CIA *World Fact Book* entry for Mexico reports Mexico's population as 111 million.[83] Using the Pew survey numbers that reported that 33 percent would like to live in the United States, that would mean 36 million would like to live here and of those 20 million say they would come in violation of U.S. immigration laws. If we examine only the age range most likely to migrate, the numbers are still large.

The *World Fact Book* says that 64.6 percent of Mexico's population of 111 million is in the 15 to 64 age range, the age category most likely to migrate. Extrapolating those 2009 figures to the Pew survey results would mean that Mexico has about 71,706,000 persons of migration age, of whom 33 percent (over 23 million) would like live in the United States. And of those, nearly 13 million would do so without authorization. Those numbers would certainly rise as economic conditions in the United States improved, thus widening the life satisfaction and opportunity gap between the two countries.

These findings are corroborated by a major series of studies by Gallup on attitudes toward migration in 20 Latin American countries. They found that,

> "It's true that in a few Latin American countries the prevalence of those wishing to emigrate is among the highest in the world. In 2007, Gallup asked the following question in 66 countries worldwide: "Ideally, if you had the opportunity, would you like to move permanently to another country, or would you prefer to continue living in this country?" Six of the 15 countries whose residents were most likely to say they would move are in Latin America."[84]

Looking at results across the 20 countries surveyed, an average of 24 percent of residents say they would move permanently if they could. Asked which country they would like to emigrate to, one-third, on average, chose the United States, with 60 percent of those from Guyana making that choice and only 12 percent of Argentineans choosing the United States.

In a different survey, covering 135 countries, Gallup found:

> "The United States is the top desired destination country for the 700 million adults who would like to relocate permanently to another country. Nearly one-quarter (24 percent) of these respondents, which translates to more than 165 million adults worldwide, name the United States as their desired future residence."[85]

More recent polls and analysis confirm these trends. A 2010 Gallup poll found that about 6.2 million Mexicans would like to move to the United States permanently, close to half of those who would like to resettle in another country.[86] Moreover, Mexicans were not alone in their preference to live in the United States. After telephone and face-to-face interviews with 347,713 adults in 148 countries between 2007 and 2009, the same survey estimated that 22.9 million people would come from China, 17 million from India, and 16.6 million from Nigeria, if given the chance.

These numbers reflect the enormous pull of the United States as destination for immigrants worldwide. They doubtlessly reflect the well-deserved reputation of the United States abroad as a country of freedom and opportunity, two basic elements of a satisfying life that are clearly in shorter supply elsewhere in the world. Yet this attractiveness creates an immigration imbalance for the United States that can be clearly stated. The United States simply can't issue visas for anywhere near the number of people that would like to live and work here.

The United States will have to become comfortable with the implications of this basic fact. One of these is that once levels of immigration have been agreed upon and allocated among the various categories, the country must reach a level of comfort with the legitimacy of its right to decide who will be admitted. Thereafter it must be strong and persistent in defending those choices against those who appropriate that choice to themselves and come here in violation of our laws.

Enforcement First?

One requirement of legislative grand bargains, like those that have been and will be proposed for immigration, is that there be a real-time trade-off of costs and opportunities consolidated in the form of a bill that is then signed into law. Now, as in 1986, enforcement is promised in return for legalization. But given the fact that IRCA produced legalization and an enforcement system that was rendered ineffective by an enormous loophole, the question of sequence arises.

Put directly, the question is this: Should the demonstration of real, effective enforcement *precede* legalization or should both be enacted and implemented in tandem? Given the debacle of the 1986 IRCA enforcement regime, the idea of legalization first, followed by enforcement is a political non-starter. So the natural position of those who favor legalization is to insist that legalization and enforcement proceed in tandem. In that view both sides equally get what they want. Those in favor of legalization get their policy preference: The status of illegal immigrants will be changed and they will become legal immigrants authorized to live and work in the United States. Those who favor enforcement presumably gain their policy preference through the strict and effective enforcement of immigration laws.

The only problem with that formulation is that it isn't true. The failed 2007 immigration bill created a process of almost instant legalization with the so-called Z-visa. This was to be granted to illegal immigrants based on the submission of an application (with fingerprints) that in the bill's draft had to be approved within 24 hours. That meant that in reality, many of the benefits that accrue to an individual in moving from an illegal status to an administratively sanctioned and legal status would be conferred immediately. Then, as now, the enforcement measures could not be immediately and effectively implemented. They have simply not been sufficiently developed to serve the purpose for which they are touted.

A 2007 analysis undertaken by the non-partisan Congressional Research Service on the Z-visa enforcement triggers that would have to be reached before illegal immigrants could have their status adjusted to becoming LPRs is informative, though not particularly hopeful. They note a list of factors that the Secretary of DHS would be required to certify in writing have been "established, funded, and in operation," including the requirements that:

> "DHS has established and is using secure, effective identification tools to verify the identity of workers and prevent unauthorized aliens from obtaining employment in the United States. These tools should include the use of secure documentation that contains photographs and biometric information on the work-authorized aliens and comply with the requirements established by the REAL-ID Act (P.L. 109-13, Div. B). Additionally, DHS would be required to establish an electronic employment eligibility verification

> system capable of querying federal and state databases in order to provide employers with a digital photograph of the alien's original federal or state issued identity or work-authorization documents."[87]

So, Z-visas would have taken effect almost immediately, conferring immediate, ongoing, and accumulating rewards. However, the enforcement part would have to await further development, implementation, and certification of a verification system and a biometric ID. That process would likely have taken many years, assuming that all the listed triggers could, in reality, be reached. Legalization advocates would have reaped the rewards of their grand bargain immediately, while enforcement advocates would have had to wait many years for their part of the bargain to reach fruition. And in the meantime, with workplace verification procedures undeveloped and not fully effective, incentives would be in place for further illegal immigration.

The same problem exists today. The MPI report discusses the enormous investment required of time, training, money, and "intensive public education and new habits by employers and workers in *every occupation and location*," to make effective workplace verification a reality.[88] After surveying the needs of such a system and its initial development and limited, experimental implementation, they express optimism that such a verification system, "*might have the chance to succeed.*"[89]

So one way to frame the allocation of risk and reward given all the factual issues raised above in connection with enforcement and verification is: immediate rewards vs. "might have the chance to succeed." This hardly seems like the foundation of an equitable or fair compromise. Yet, the reality of the matter is that legalization can be accomplished with a "stroke of a pen," while a truly effective and fully implemented verification process is technically, administratively, politically, and financially years away.

What do the three blue ribbon immigration task forces have to say about this grand bargain asymmetry? The MPI report provides a "*Sample Agenda* of Actions for Implementing Mandatory Electronic Verification by Employers."[90] They envision a three-year program upon enactment of their proposed legislation that includes legalization that would develop, test, and implement a mandatory national verification and secure ID that has successfully overcome all the difficulties noted above. That time frame strains credulity, common sense, and the history of implementation efforts of other large-scale government programs.

Elsewhere the MPI report notes that "many of the reform ideas under consideration in Congress — for example, mandatory employer verification, granting legal status to millions of unauthorized immigrants, and quadrupling employment-based visas — *are more ambitious than anything that has been attempted before in the immigration arena*."[91] Indeed, the report spends several pages dealing with the complex issue of secure documents, including the problems of "breeder documents," such as birth certificates, that are used to obtain other documents.[92] How this issue and the myriad other complex issues will be resolved within three years is difficult to understand.

The CFR report doesn't address the issue of asymmetric gains from any grand bargain which, given its importance, is surprising. Yet the issue did come up in the panel discussion and Q&A that accompanied the public presentation of the report:

> "QUESTIONER: Did you discuss and did you conclude anything as to whether that's a both and — in other words, they're both good things and we should do them in their own time and way? Or is it a both if — are they linked? Does one need — do legalization and then the workplace verification? Or do you need to have verification established before legalization can play out? How does that dynamic between the two of them work out? Or are they just set side by side?
>
> MCLARTY: I think there are a number of elements in the report and a number of recommendations that are really equally important and critical, *and really have to be done essentially at the same time* …. But you can't have that kind of approach to enforcement without having a way to verify legal employment. *And the technology is quickly becoming available, is largely available to do that now …. So to me, at least, those really are part of a comprehensive approach, have to be done and to generate at the same time. Will there be some sequencing or different levels of progress being made in some of the technology and so forth? Sure there will be*. But I think you have to have a comprehensive approach. I think we largely know what those measures are. *We're already, frankly, making good progress in almost all of the areas*. It's the political will and leadership to get this done in the right way."[93]

It is clear that the MPI and CFR reports differ dramatically on the issue of whether workplace verification technology is effective. The MPI report addresses the complex technical, political, administrative, and other

issues involved in workplace verification and developing biometric IDs in great detail and concludes, "it might have the chance to succeed." In the CFR Q&A, one of the report's principals says, "*And the technology is quickly becoming available, is largely available to do that now.*" The evidence and analysis presented earlier suggests this latter characterization is unsupported by the facts.

And what of the Brookings-Duke report? To the credit of its integrity and fair-mindedness, it is the only task force report of the three that links enforcement and legalization in a discrete step-by-step process. Unlike the very optimistic view that the verification technology is already operative or can become so in a short period of time, the Brookings-Duke report acknowledges that E-Verify will need continuing funding and support and still has serious technical problems.[94] They would rely on the GAO to certify that the E-verify and biometric systems are operating in a valid and reliable way and once that's done the legalization process could begin.[95]

What of the questions raised during the CFR Q&A: "What happens in the interim? Are there more people who come in, hoping to be part of the earned legalization program? If you do it the other way, the issue is, do you have enough on the enforcement side to prevent the kind of new surge of illegal immigration like we saw after 1986?"

The Brookings-Duke report's answer is that a prior cutoff date, say five years before any legislation becomes law, would be the date that illegal immigrants would have to prove they were in the country and working. New arrivals, those who arrived after the cutoff period, would not be included in the legalization process.

The Brookings-Duke report also argues that not only should the effectiveness of workplace verification procedures have to be certified, but also the effectiveness of procedures in place to reduce fraudulent applications. These too, they say, would have to be periodically assessed and certified by the GAO for any legalization process to continue. Of the three task forces, the Brookings-Duke report is the only one to mention this important issue, much less take it seriously.

Part 2: Immigration Ceilings, Family Preferences, and the Real Meaning of Diversity

Abstract: *We begin the second of our three-part analysis with the observation that the trajectory of task force recommendations and past adjustments in immigration numbers has been ever upward, never holding long at new higher levels, and certainly never decreasing. This trend is substantially the result of a family reunification policy that gives preference to immediate and more distant family members of legal immigrants, and under conditions of legalization, for the extended families of formerly illegal immigrants as well. We analyze the relationship of these policies to the issue of backlogs, proposed changes in the weight accorded to skilled immigrants, and the neglected issue of broadening immigration diversity.*

In this section, we also take up a question unaddressed in the three blue ribbon immigration task forces concerning how many immigrants each year would be a reasonable number, given their impact and the questions that arise about their assimilation and integration into the American national community.

The issue of broadening immigration diversity also has implications for immigrant assimilation and integration. We define those terms as including more than cultural familiarity or economic advancement and stakeholding, and argue that it entails emotional attachment and identification as an American. The breadth or narrowness of immigration diversity has an effect here. Evidence suggests that an attachment gap is developing among some groups of immigrants, precisely those who now make up a disproportionate share of the immigrant population.

Family reunification policy and the preferences that flow from it are a critical part of America's immigration dilemma. The 1990 Immigration Act established a limit of 480,000 family-based admissions, but this number was insufficient for the demand created by allowing the extended families of legal immigrants to apply for Legal Permanent Residence (LPR). By way of comparison, in 2008 the United States admitted 1,107,126 legal immigrants.[96] Of those, 227,761 (20 percent) were in family-sponsored preferences, 488,483 (44 percent) were the immediate relatives of U.S. citizens (spouses, children, and parents), 166,511 (15 percent) were in employment-based categories, 41,796 (4 percent) were winners of the visa lottery, 90,030 (8 percent) were refugees, and 76,362 (7 percent) were asylees.

Family Preferences: The Basic Issues

It is easy to document that the authorized levels of legal immigration have gone up, but it is not until you consider the impact of definitions underlying family reunification that the real numbers come into sharper focus. Looking at immigration statistics, it is clear that the family preferences are the now main driving force of high immigration numbers (64 percent of the total). It is worth pausing for a moment to list just who is involved in the term family preferences, since its definition and revision are central to many notions of immigration reform and its implications for any grand bargain are rarely discussed.

There are two major categories, "family-sponsored preferences" and "immediate relatives of U.S. citizens." The latter are admitted without being subject to numerical limits of any kind. The first includes: (1) unmarried sons and daughters of U.S. citizens and their children, if any; (2) spouses, children, and unmarried sons/daughters (over age 20) of Legal Permanent Residents (LPRs); (3) married sons/daughters of U.S. citizens and their spouses and children; (4) brothers and sisters of U.S. citizens (at least 21 years of age) and their spouses and children. Once persons in these categories are admitted, their families in turn become eligible became for family-sponsored preferences.[97]

And if any immigrants admitted under family-sponsored preferences become citizens, they are eligible to bring in family members under the category "immediate relatives of U.S. citizens" that includes spouses, minor children, and parents, who are not subject to any numerical limits. These new immigrants, too, then become eligible for "family-sponsored preferences" privileges, and if they become citizens they also become eligible to make use of "immediate relative of U.S. citizens" admission categories.

It is easy to see that current immigration categories, their definition and the numbers that the flow from them operate to create a large and increasingly expanding pool of people eligible to settle in the United States, It also helps to explain why the numbers of legal immigrants keep climbing in spite of the 675,000 total immigrant

ceiling imposed by Congress in 1990. Immediate relatives of U.S. citizens can, remember, enter free of any ceiling imposed and those numbers have continued to trend upward: 257,715 in 1999; 346,350 in 2000; 439,972 in 2001; 483,676 in 2002; 331,286 in 2003; 417,815 in 2004; 436,115 in 2005; 580,348 in 2006; 494,920 in 2007 and 488,483 in 2008.

To these numbers must also be added the children of illegal immigrants who are by law American citizens and who, when they reach majority, will be able to sponsor their immediate relatives. The Pew Hispanic Center estimates that the number of U.S.-born children living in a household with at least one illegal-immigrant parent "has expanded rapidly in recent years, to four million in 2008 from 2.7 million in 2003."[98] And of course, as currently proposed, any legalization of the approximately 10-12 million illegal immigrants will immediately make them eligible to take advantage of family-sponsored preferences, and after five years, if they become citizens, "immediate relatives" with no numerical limit.

Immigration Backlogs — Then, Now, and Beyond

The combination of a ceiling on family-based admissions coupled with an expansive definition of family membership resulted in a backlog that is an ongoing source of concern and complaint. The problem then and now is easy to see. Any ceiling on the yearly number of immigrants admitted — whether it is the 550,000 recommended by the Jordan Commission, the 1.1 million proposed by the Brookings-Duke report, or the 1.5 million recommended by the MPI report — will have to be apportioned among regular and work-related visas (as well as refugees and asylum seekers) in some way, and each of those admitted will gain the right to have family members apply for green cards. Moreover, immigrants who have become American citizens and those who have previously been granted legal status also will have that right.

Any legalization of the estimated 10-12 million illegal immigrants would greatly magnify the backlog problem. Almost immediately this large group would be eligible for family preferences that, as they now stand, would include not only spouses and minor children, but parents, adult brothers and sisters (married and unmarried) and their children. Unless yearly overall caps were raised to figures not yet contemplated, or family preference definitions were narrowed, large backlogs would again develop because of the multiplier effect of family preferences as currently defined. Basically that effect stems from the mathematical fact that the larger the base number and the larger the number of admissions that can be added to that base number, the larger the demand for new family visas will become. This is how large backlogs have developed and would become an ongoing problem.[99]

In 1995, the Jordan Commission estimated that the total backlog for family preferences was 1.1 million, consisting of 834,000 from the IRCA legalization, 279,000 from the difference between "normal" family preference applications and overall ceiling numbers, and 80,000 spouses and children of LPRs.[100] The 2009 CFR report estimated that the current backlog has increased to 4.9 million people,[101] a figure drawn in part from State Department estimates[102] and which has likely risen since then.

How the issue of family preference definition is handled makes an enormous difference to the overall number of immigrants admitted to the United States, both at the time of any future immigration agreement and going forward from there. The reason is simple. As the CFR report points out, "the backlogs are likely to become much longer if, as the Task Force favors, there is an earned legalization program in place. As unauthorized migrants acquire permanent residence and eventually citizenship, the demand for family visas, and *thus the backlog, is likely to grow even larger*."[103]

The Jordan Commission recommended that an additional 150,000 visas be made available annually until the then-current backlog was eliminated,[104] *but only for spouses and minor children.*[105] This was consistent with their recommendation that the "family preference" category be narrowed to nuclear family members.[106] The Commission listed "first priority" admissions as spouses and minor children of U.S. citizens; second priority would be parents of U.S. citizens (with an affidavit of financial support); and third priority would be spouses and minor children of Legal Permanent Residents (LPRs).[107] Note that adult sisters and brothers and adult children were *not* included in any tier of the three priorities. And note further that the families of U.S. citizens were given the highest priority to "reinforce the notion that citizenships confers additional benefits on those who become fully participating members of our polity."[108] Finally, the three priority tiers were all capped. The first priority tier was capped at 40,000, the second at 40,000 minus the numbers granted to first priority family members and so on.[109]

The pending Democratic proposal for immigration reform takes several large steps away from the Jordan Commission recommendations. It states that, "the family immigration backlog will be cleared over the course of eight years."[110] The proposal does not say how that will happen, but it won't be accomplished in eight years or any period of time without issuing additional green

cards during that period. Also unclear in the proposal are which family members will be included. Even if only all those family members included in the three-tier system proposed by the Jordan Commission are included, millions more immigrants will have to be added to the total covered by the legislation.

The Democratic proposal also says that, "after eight years the current numeric caps on family preference categories would remain the same as in current caps."[111] However, as explained above, this is a recipe for building up another backlog over time that will eventually generate pressure to be "fixed" through legislation. The proposal further says that, "spouses and children of lawful residents will be classified as 'immediate' relatives' to promote the efficient reunification of families."[112] It is unclear just to what this refers. Is it meant for the backlog visas? For all of the 10-12 million illegal immigrants whose status would be legalized? For all new visas issued going forward? For some, all? The proposal, as of now, does not envision giving any preferential standing to citizens, nor does it appear to contemplate a three-tiered ordering of family preferences, as did the Jordan Commission. If enacted, a large surge in immigration numbers is entirely predictable.

Immigration Ceilings And Family Preferences

In the current debate over comprehensive reform one seldom-discussed question is the issue of which family preference standard will be used. When Homeland Security Secretary Janet Napolitano recently outlined the administration's proposals, she said:

> "Let me be clear: When I talk about 'immigration reform,' I'm referring to what I call the 'three-legged stool' that includes a commitment to serious and effective enforcement, improved legal flows for families and workers, and a firm but fair way to deal with those who are already here."[113]

The twin pillars of enforcement and legalization are readily apparent, but it is the phase "improved legal flows for families and workers" that merits some attention. What could that phase mean? One obvious surmise is that it refers to the backlog of non-immediate family members who are entitled to become LPRs, but must wait, as noted above, in a long line. That backlog could be remedied, as both the Brookings-Duke and Jordan Commission proposals suggest, by adding an additional number of visas each year until the backlog is caught up.

However, it makes an enormous difference as to exactly who is included as being eligible for those extra visas. For those already in the family preference queue, the question is, will all four categories be included? If so, the number of additional visas will need to be quite high. And the same question applies equally to that proportion of the 10-12 million illegal immigrants who would be legalized by any new agreement. If all four categories of family preferences are kept, the number of new qualifiers for visas will be in the multiple millions. This in turn will require either raising the statutory limit of yearly visas issued, or developing a new queue.

All of these numbers have implications for immigration reform in general and for the specific proposals of the blue ribbon commissions. They all recommend a change from a policy based on family preferences to one that gives more weight to "skills." The Brookings-Duke report also recommends narrowing of all family-sponsored preferences to nuclear family members. Indeed the two positions are connected.

They want a 150,000 per year increase in "skilled immigrants" and then add, "We propose 'paying for' this increase by eliminating the Diversity Visa Program and by limiting all family sponsored preferences to nuclear family members."[114] The remaining preferences would include spouses, minor children, and parents of American citizens, and spouses and minor children of LPRs.[115] Gone from this family preference list would be: (1) unmarried sons/daughters of U.S. citizens; (2) adult unmarried adult sons/daughters of LPRs; 3) married sons/daughters of U.S. citizens and their spouses and minor children; and (4) brothers and sisters of U.S. citizens (at least 21 years of age) and their spouses and minor children.

They believe their policy suggestion would help balance the competing immigration priorities of family reunification and recruiting skilled workers needed by our economy, *without trying to resolve the issue by simply expanding both categories and thus adding enormous numbers and new pressures on the immigration system.* This is an obvious danger given that grand bargain enthusiasts often balk at making any substantial concessions. What better way to make everyone happy than to simply increase all the immigration numbers by using robust family rteunification definitions?

There are, however, two major problems with the Duke-Brookings proposal, both political. The first is that the chief beneficiaries of family preferences are those groups that have the most members living in this country, i.e., Hispanics. I have never seen the specific question asked, but I think it quite clear any attempt to reduce family preferences would be met by vocal protest

from a group whose support both political parties and this president are trying to gain.

And it wouldn't be just Hispanics who would be angry. When the Jordan Commission recommended reducing immigration numbers somewhat by a narrowing of the family preference categories, one of the commissioners strongly dissented as follows:

> "This reduction comes at the expense of thousands of American families who have been patiently waiting for legal reunification with their close relatives overseas. It is accomplished by eliminating three of four family preference categories and *simply shutting the door on thousands of sons, daughters, and siblings of U.S. citizens."*[116]

This dissent has the advantage of being factually correct, without however placing that fact in the context of a larger public good. The highlighted part is evocative and most likely would resonate with the American public. Moreover, if this battle is joined the political rhetoric and hyperbole will make it very difficult to make this kind of compromise trade off.

President Obama and Family Preferences

However, there is another reason why this kind of bridging trade is unlikely to happen. The President is against it. During the 2008 presidential campaign he provided a series of written answers to immigration questions posed to him. Among his points:

> "In the most recent immigration debate on the U.S. Senate floor, I fought to improve and pass amendments to put greater emphasis on keeping immigrant families together and to revisit a controversial new points system that never received a proper public hearing….
>
> *Family immigration should remain the foundation of our system.* We need comprehensive immigration reform that is safe, orderly, humane, and legal, *and that places an emphasis on families.* This issue was one of the most disturbing aspects of the recent immigration bill. Along with Senator Menendez, *I led the fight against the proposal to take visas away from families* and put them into a new untested point system.
>
> The point system instead of family visas betrays American family values, the same values that the family-based preferences in our immigration law are designed to enforce. It gave no preference to an immigrant with a brother or sister or even a parent who is a United States citizen unless the immigrant met some minimum and arbitrary threshold on education and skills."[117]

Also of interest, given the importance of the Brookings-Duke recommendation as the basis for a bridging trade, was the then-Senator's statement: "The point system for more skilled immigrants would not have been as *offensive had it supplemented our existing visa categories.*"[118] Taking away family preference categories from a large, growing, and political important group immediately before a congressional or presidential election is not a winning strategy, and one does not need a crystal ball to predict that the president and his party, aiming to regain control of both houses of Congress, want to keep it that way and will not support such an effort. Instead, if they support any addition to skilled worker visas it is likely to only be in exchange, as Obama indicated, for "supplementing our existing visa categories."

They are likely to make their own bridging proposal. They will offer some incremental addition in skills-based visas in addition to keeping family preferences, thus offering another version of the logic that underlay the Brookings-Duke roundtable deliberations. This "something for everyone" approach is conventional presidential strategy, when possible, though its net result will be to substantially increase the number of visas granted each year. That approach makes good sense for the President and his party, but whether it makes good sense for the country is likely to be a debate that is bypassed. The United States has never really had this debate, but would benefit from it.

What Is the Optimal Number Of Immigrants?

The United States has never had a coherent public debate on what might be considered optimal levels of immigration. Such a debate would no doubt be contentious, but it certainly would be preferable to the segmented, ad hoc, and seemingly inexorable increase in the number of immigrants legally admitted into the United States. Such a debate might well take into account the ability of the country to help new immigrants become attached to their new country, the resources that would need to be committed in order to help new immigrants make their

way in their new country, the demands for new services (housing, energy usage, schools, health facilities, and so on) that different levels of immigration would entail, and some estimate of the resources needed to accomplish that. Those debates would also have to address the differences that arise in admitting different percentages of more or less skilled or educated immigrants.

There is, of course, no magical "optimal number" of immigrants, but the debate would at least have the virtue of making clear the different elements that go into such a target. Therefore, it is a matter of some regret that this issue is not discussed in any of the three new major task force reports concerning the question of whether overall immigration numbers should kept the same, reduced, or increased and on what basis.

Some Optimal Numbers And their Assumptions

The Immigration Act of 1990 (IMMACT) established a worldwide level of 675,000 family-based, employment-based, and diversity immigrants per year. That number represented an increase of about 40 percent compared to previous legislated levels that averaged about 210,000 immediate relatives who could, and still can, enter without numerical limits, and numerically limited categories that were set at 270,000.[119]

IMMACT also extensively revised the nation's employment-based categories. It increased the number of such admissions to 140,000, up from an annual limit of 54,000. Those numbers were distributed over a number of categories reflecting education and skill levels.[120]

The 1997 Jordan Commission believed that "modest reductions in levels of immigration — to about 550,000 per year, comparable to those of the 1980s — will result from the changing priority system."[121] Those numbers would have been achieved by using the following figures: nuclear family immigration, 400,000; skill-based immigration, 100,000; and refugee settlement, 50,000.[122]

How Many Immigrants Are the Right Number?

None of the blue ribbon immigration reports took up the question of how many immigrants would be a desirable number. The Brookings-Duke report suggests a ceiling of 1.1 million new immigrants every year and the MPI report suggests that the United States begin to admit 1.5 million new immigrants every year. The CFR report is silent on specific numbers.

The Brookings-Duke report reached a ceiling of 1.1 million new visas a year by taking an average of the five-year period 2004-2009.[123] Yet that figure is somewhat misleading because it is at the higher end of the admission figures over the last decade. Those higher figures in turn are fueled, as already noted, by the numbers of immediate family members who are not subject to caps of any kind. The Duke-Brookings report recognizes that this is only part of the picture because "as many as 600,000 individuals come here to work every year on temporary work-based visas.[124]

The MPI report notes that as well, but makes it the basis for their suggestion that the United States begin to admit 1.5 million new immigrants every year. They start with a figure of 1.8 million as the true level of annual immigration, including illegal immigrants and some of the "temporary" workers who in fact hold permanent jobs.[125] They then subtract 300,000 to get to the 1.5 million figure, "because some whom the system 'locks in' [as permanent immigrants] can be expected to choose to travel to and from the country for work purposes if they can, rather than relocate residences with their dependents as happens today."[126] They assume that all those numbers represent immigration that America needs, the only problem being the distribution between family preferences of those on work visas.

The MPI report's proposed 1.5 million figure[127] is made up of family visas (620,791 or 40 percent)[128] and work-related visas (750,000 or 49 percent).[129] This dramatically changes the relative percentages in our current immigration system from what they are now: family preferences (63 percent) versus employment visas (17 percent). However, notice that in terms of absolute numbers there is no real change in the family preference category. In the currently operating system they account for 621,878 visas. In the proposed system they would account 620,791 visas.

How is possible to keep the high level of family visas while at the same time dramatically increasing work visas? Simple: addition.

The Brookings-Duke report follows the same track. It also suggests increases in the number of work visas and keeps the overall level of family preference visas. They propose an increase of 150,000 work visas to bring the overall number to 330,000 (30 percent), up from the current figure of 180,000 (16 percent). The CFR report also argues, "that the number of employment-based green cards should be considerably higher."[130] How much higher? They don't say.

The CFR report also recommends that temporary work visa holders, with the exception of seasonal work

visas, not be required to state their intention to leave at the end of their work because "such a requirement is an anachronism that does not reflect how immigration to the United States actually takes place for most people and does not recognize national interest in encouraging some of these visa holders to remain in the United States permanently."[131] How many? Again, they provide no figures. However, it is clear that making the number of work visas "considerably higher" and allowing temporary work visa holders to become permanent residents, especially if we are going to allow them bring their families (as we should if they become permanent residents), will substantially increase the number of immigrants entering this country every year.

Addition Squared: The 2010 Democratic Immigration Proposal

In considering the question of the annual level of immigration, readers should keep in mind that the base numbers described above are, in many cases, a floor, not a ceiling. Depending on how backlogs, worker's visas, and student visas are handled, those numbers could be dramatically increased.

So, for example, the 2010 Democratic Party proposal for immigration reform states as part of its legislative plan, "a green card will be immediately available to foreign students with an advanced degree from a United States institution of higher learning in the fields of science, engineering, or mathematics" if they have an offer of employment. In addition the plan envisions that, "Foreign students will be permitted to enter the United States with immigrant intent if they are a bona fide student so long as they pursue a full course of study at an institution of education in a field of science, technology, or mathematics."[132]

The United States does not keep detailed records of the number of students who graduate each year with from "institutions of higher learning" with advanced degrees in the fields of science, engineering, or mathematics. It does not define what an institution of higher learning is nor does it define the content of the fields of science, engineering, or mathematics. All of these terms will have to be defined and written as administrative rules; and as we will document in a later part of this analysis, that process provides an opportunity for advocacy groups to recover any lost ground that they may have compromised on to achieve their larger goals in any legislative grand bargain.

Yet, we can make some estimates. In 2009 the figure for academic foreign students was 895,392, in 2008 the figure was 859,169, and in 2007 it was 787,756. Spouses and children of these F-1 visa students added another 40,000 in each of those years.[133] These figures tell us the numbers of foreign students studying, but not what they study. An estimate of that figure can be partially derived from other sources.[134] According to estimates[135] by the Institute of International Education,[136] in 2009 the figures were 118,980 (engineering), 56,367 (mathematics and computer science), and 61,699 (physical and life science). These figures represented an increase of 23.8 percent, 21.7 percent, and 16.7 percent, respectively, from the previous year. These specialties represented 17.7 percent, 8.4 percent, and 9.2 percent of the total number of foreign students. These figures do not include spouses and children. It is to be expected that when the automatic opportunity to gain a green card for certain fields of study are written into law, those fields will doubtless undergo an enormous expansion.

The proposed Democratic legislation also "creates a provisional visa (H-2C) for non-seasonal, non-agricultural workers to enter the United States. The visa shall be for three years, and is renewable once for a total of six years. *Workers in the H-2C program shall be permitted to earn lawful permanent residence* if they meet sufficient integration metrics to demonstrate that they have successfully become part of the American economy and society."[137] These are *in addition* to the yearly number of regular green cards. No specific numbers are given, but again we can make some estimates.[138] In 2009, the number of temporary workers admitted into the United States was 1,703,697, in 2008 it was 1,949,695, and in 2007 it was 1,932,075. If we subtract the number of seasonal agricultural workers (H-2A visas) who are treated distinctively in the Democratic proposal, we arrive at the following figures for those who would have been eligible for permanent visas had the Democratic proposal been law then: 2009 (1,553,934); 2008 (1,776,694); and 2007 (1,844,759).

And again here, as in the Democratic proposals on granting Legal Permanent Resident (LPR) status at some point to all but seasonal workers, there are *in addition* to the regular level of green cards granted each year, their families, and the educational green card holders and their families. If these policy proposals become law and are up and running, the increase in annual legal immigration is likely to run to many millions.

Eliminating Illegal Immigration By Raising Illegal Immigration

It may not be immediately obvious, but the recommendations of all three blue ribbon panels for substantially raising the number of work visas and allowing temporary workers to adjust their status to become LPRs while keeping or fine tuning family preferences[139] is an unspoken vehicle to address the problem of illegal immigration. Two of the task forces make this clear. The CFR report says: "*Comprehensive immigration reform would substantially lower the flow of illegal migrants by providing alternative legal channels for migrants to live and work in the United States*."[140] The MPI report is more circumspect; they set the number of provisional work visas "to approximate current flows of such workers who enter both legally and illegally."[141]

Or, to put their policy logic another way, there will no longer be a problem with illegal immigration if only we increase the amount of immigration that is legally allowed. This is precisely the logic of the bill introduced by Rep. Luis Gutierrez (D-Ill.). He invents a new form of visa, ironically entitled a Prevent Unauthorized Migration (PUM) visa. The bill authorizes 100,000 of these visas a year for at least three years,[142] and its purpose is reflected in its title.[143] The logic appears to be that simply making more visas available can solve the problem of unauthorized immigration. And it can if enough are given.

Interestingly, the Gutierrez Bill calls for these PUM visas to be distributed by lottery to immigrants "from countries with large numbers of unauthorized immigrants."[144] The logic of this policy appears to be that since so many nationals from those countries have already made it clear that they intend to live in the United States regardless of their legal status, we can avoid this problem by providing additional visas so that they won't have to live here illegally. At the same time, this policy could be interpreted as a reward for having large numbers of nationals living in the United States in spite of their lack of status.

If one looks at the countries of nationality of deportable aliens caught in 2008, the following are the top five countries: Mexico (693,592); Honduras (23,789); Guatemala (22,670); El Salvador (17,911); and Brazil (2,649).[145] Another way to look at the possible beneficiaries of the PUM visas is to examine the estimated illegal population now living in the United States by country of origin.[146] The list gives the following as the top five countries in 2008: Mexico (7,030,000); El Salvador (570,000); Guatemala (430,000); the Philippines (200,000); and Honduras (160,000).

The assumption of this approach should be clearly stated. We will be able to cut down the number of illegal immigrants by making more green cards available. Few will be illegal because of an enormous expansion of the numbers of immigrants who will legally be able to come here, especially from South and Central America and Mexico. This seems somewhat analogous to decreasing bank robberies by allowing bank tellers to simply give away money on request. The fallacies in making illegal immigration a null, empty category by making almost every aspiring immigrant legal are obvious. When a desirable object is subsidized, you increase the demand for it. Moreover, there are enormous civic, cultural, and political costs to such an approach to reducing illegal immigration. That these costs will not be immediately and directly felt makes short-term political fixes more attractive, but the latter are worse than a dead end. If enacted, they will become a partially hidden, inexorably gathering calamity that could have been avoided by some honest facing of facts and political courage.

The Unifying Benefits of Broadening Immigration Diversity

In American political life diversity has become an iconic word for those who believe that the encouragement and accommodation of "difference" reflects the best traditions of this country. Yet, paradoxically, a forthright discussion of the benefits of broadening the diversity of the stream of immigrants coming to the United States is rare.

There are several possible reasons for this. The United States takes in immigrants from about 200 countries and there is no doubt this makes our immigrant population diverse. Yet in important ways it is a shallow diversity. That is, the United States takes a relatively few people from many countries and a relatively large number of people from a few countries. It is a further fact that many of the immigrants that account for those large numbers arrive from countries that share linguistic and cultural similarities. That buildup is facilitated by current immigration policy, including family reunification preferences built into immigration law. As a result, several immigrant groups, taken together, are reaching absolute numbers that are unprecedented in American history.

The existence of large numbers of new immigrants who share cultural, linguistic, and other elements of a common identity within an existing political community organized around different linguistic and cultural identity elements raises questions about the prospects for integration of these new immigrants based on genuine emotional attachment to the United States. The concern

is not to be found in the inherent nature or the cultural, linguistic, or other attributes of the new group(s); but rather in the impact that large numbers bring to that assimilation equation.

This is a difficult issue to raise and address. Those immigrants living in the United States from these countries and regions benefit in many ways by having large numbers of their own group in the United States. Large numbers attract political attention and efforts on the group's behalf. This in turn puts them in a more powerful bargaining position regarding the achievement of their own policy preferences, many of which are, unsurprisingly, related to further enhancing the power and well-being of their own group.

There are as well other kinds of benefits, as the research on out-group-marriage rates demonstrates. In a discussion sponsored by the Population Reference Bureau on racial and ethnic intermarriage, Daniel T. Lichter, professor of sociology at Cornell University, had this to say, "My work with Zhenchao Qian shows that intermarriage rates between Hispanics and whites and between Asians and whites have declined over the past two decades. A large part of the decline is, in fact, located in the growing supply of potential marriage partners resulting from new immigration of co-ethnics"[147]

There is nothing historically unusual or illegitimate about this, but in the context of American immigration policy it does raises questions that deserve to fairly addressed. The idea that immigration policy should attempt to broaden the number of people from other countries rather than continue policies that lead to the rapid acceleration of numbers of a small group of countries is, understandably, likely to met with rejection, and worse, by some of those who benefit and their advocates. That is to be expected.

It is a difficult issue in another way as well, since those who benefit from current policies might well feel that any consideration of the issue is directed against them personally or as a group. In such circumstances heated charges are an easy recourse. Yet the real question is whether a policy that results in tens of millions of one particular immigrant group is more beneficial to the United States in its efforts to help all immigrants become more integrated and attached to the American political community than having a policy where no one ethnic or cultural group dominates immigration numbers.

Prelude to Politics: The Hispanic Immigration Surge

The figures discussed above suggest the dilemma that faces all of the immigration task force recommendations, the Congress, and the American people. If we examine the country of last residence for 2008 immigration admissions we found the following: Europe, 121,146; Asia, 369,339; the Americas (Canada, Mexico, and the Caribbean), 491,045 of which 188,015 are from Mexico; Central America, 49,741; South America, 96,178, and Africa 100,881. If we just list the Spanish/speaking culture sending areas we find: Spain 1,970; Mexico 188,015; Cuba 48,057; Dominican Republic 31,801; Central America 49,741; and South America 96,178.[148] These areas and countries differ, but together they roughly make up the "Hispanic" population in the United States. And in 2008, they totaled 415,762, or 37 percent, the largest cultural group in the U.S immigration stream — and it has been that way for many years.

Another way to look at the same question is through the analysis of the total foreign-born population of the United States, those who were not U.S. citizens at birth, whether they entered legally or illegally, on permanent or "temporary" visas. Over time the number of foreign-born persons in the United States from Latin America has surged. In 1960, they accounted for just 9.4 percent of the foreign-born population.[149] By 2007, of the total foreign-born population of 37.3 million, fully 54.5 percent, were born in Latin America, with 31.3 percent of the total from Mexico alone.[150]

Recently the Census Bureau released its projections for future population growth and the numbers are directly relevant to the issue of broadening immigration diversity.[151] The projections are done for each of four levels of immigration; High Net Migration,[152] Low Net Migration,[153] Constant Net Migration, and Zero Net Migration.[154] The "Constant Net Migration" assumed about one million new legal immigrants coming into the United States each year, consistent with current numbers.

The report notes, "Even if net international migration is maintained at a constant level of nearly one million, the Hispanic population is still projected to more than double between 2000 and 2050." It continues, "The percentage of Hispanics in the U.S. population is projected to increase substantially in all five series" of analysis. How substantially?

The projection data suggest the following: In the Zero condition of no new immigration at all, Hispanics would constitute 21 percent of the American population in 2050. Assuming a continuation of the current rate of immigration, Hispanics would constitute 27.9 percent

of the American population at mid-century. Assuming immigration numbers that are modestly higher than the current rate, as all three immigration task forces suggest in their proposals, Hispanics would constitute 29.2 percent of the American population. And assuming that immigration rates rise more than modestly, Hispanics would constitute 31.3 percent of the population.[155]

The Constant figure, keep in mind, is an extrapolation from *current numbers*, but equally important, from *current policy*. It assumes that current family preference structure remains in place and that the overall number of visas issued does not rise as suggested by the MPI and Brookings-Duke reports, a rise that is endorsed in principle by the CFR task force, and is certainly endorsed by the 2010 Democratic immigration proposal.

It does *not* assume that uncapped limits for "immediate relatives of U.S. citizens" will be extended to all legal immigrants, as Rep. Gutierrez's 2009 immigration bill mandates.[156] It does *not* assume any additional visas issues to clear up the backlog of family preference applications, as all three task forces recommend, or the additional family preference admissions that would result from it. It does *not* assume any additional number of visas issued every year for immigrants from countries that have contributed the most to the illegal population in the United States, as the Gutierrez bill mandates.[157] It does *not* propose that temporary workers be able to adjust their status over time to LPR status, as the CFR report and 2010 Democratic Proposal propose. And the census models certainly do *not* assume a legalization process that would result in 10 to 12 million new immigrants and their families having their status adjusted to LPRs, and thus able to petition for additional immigrants. Should one or more of these elements become law, Hispanics as a percentage of the total American population would increase enormously.

These figures are not meant to alarm, but to inform. They raise the question of whether a policy of broadening the diversity of our immigrant stream might be worth considering. As it stands now, one major group, immigrants from Spanish-speaking cultures, are arriving and settling in the United States in disproportionately high numbers compared to other groups. Their impact is amplified because of their growing numbers, and the incentive to accommodate their political and cultural preferences because of their potential importance to both political parties.

Paradoxically, this sense of importance is facilitated by the widespread use of the term "Hispanic," a term that suppresses cultural and other differences among immigrants from different Spanish-speaking countries. The official term as it is found in our everyday conversation, media accounts, and even official government terminology suggests that those who speak Spanish or come from a Spanish-culture country are indeed more alike than different, thus reinforcing their identity as a single group.

These facts have enormous cultural and political implications, but here I want to deal with one only aspect of those: its impact on the coming immigration debate. A typical news story on the subject notes the demographic fact that "Hispanics are the nation's fastest-growing minority group"[158] and then goes on to detail the challenges of political leaders and parties in gaining their support. The President did very well in the Hispanic community in the 2008 election and it is no secret that Democrats would like to consolidate and extend that support. An immigration reform bill is the perfect vehicle to do so.

Immigrants to the United States from diverse Spanish-derived cultures are not homogenous in their views on a range of issues, including immigration. However, it is fair to say to that on some specific immigration issues, and on issues that have an impact on the extended Spanish-speaking community, they do tend to coalesce around a particular set of views.[159] For example a large national Pew Hispanic Center study found that 75 percent of such persons disapproved of workplace raids, 55 percent opposed having to present personal identity verification before getting a drivers license, and 79 percent opposed involving local police in immigration enforcement. Corresponding approval figures for all non-Spanish speakers on these issues were 51, 85, and 45 percent, respectively. Fifty percent of Latinos said in 2007 the growing number of illegal immigrants has been a positive development.

Or consider responses to the recently passed law in Arizona making it a crime to be in the state without having been legally admitted to the United States. The law allows local police to ask for citizenship papers from people they suspect of being here illegally and to arrest them if they can't produce the documents. One poll on the issue — which questioned 1,001 adults of all races from the general population, plus 901 Hispanic adults – reads as if soundings were taken of two distinct worlds. It found that 74 percent of Hispanics said the country's estimated 10-12 million illegal immigrants mostly contribute to society. Just 35 percent of non-Hispanics agreed with that, with 60 percent saying illegal immigrants are mostly a drain. In addition, 67 percent of Hispanics said they oppose the Arizona statute. Just 20 percent of non-Hispanics oppose it, with 45 percent favoring it and 30 percent neutral.[160]

Or finally to take another issue — health care — 67 percent of persons with Spanish-speaking backgrounds surveyed think everyone should be covered, without regard to citizenship or immigration status, while only a quarter (25 percent) would restrict benefits to citizens

and legal residents only.[161] When it comes to immigration issues and especially those that affect the Spanish-speaking cultural community in the United States, one can discern a definite point of view.

I have never seen the question about possible variations in family reunification asked in a survey questionnaire; however, it is not hard to envision the result if it ever became a real matter for legislative debate. If the narrowing of family reunification categories ever become a real policy option, as the Jordan and Brookings-Duke reports have suggested, and therefore a real political question, there would be a loud and substantial outcry in the Spanish-speaking American community against such a move. The pressure brought to bear on the basis of "family values" would be enormous, with support from the President. At that point the preferred policies of experts, however desirable, would face the hurricane-force political winds of a large, growing, and politically sought-after group. Yet, it is worth considering the benefits of broadening the diversity of our immigration flow.

Immigration Diversity: Meaning and Implications

There is no doubt that as a result of eliminating national origin, race, or ancestry as a basis for immigration in 1965 (The Hart-Celler Act)[162] the United States has become much more diverse.

In the past, some thought that the best way to preserve an American identity in the face of worries about whether new immigrants would "fit in" was to limit the nationalities of new immigrants to those who were already most like us. However, America's experience with the first and longest great wave of immigration at the turn of the last century suggested this was not necessary. A great deal of evidence supports the view that those who had before been viewed as "foreign" were, over time, well able to integrate into the American national community.[163]

The same question though now lies before us with America's current great wave of immigration that began after 1965. Paradoxical as it may seem, in theory real diversity in the ongoing stream of immigrants to the United States helps to ensure that integration into the American national community is not the expectation, but the norm. The reasons for this seem self-evident when you think about them.

We are accustomed to limit our thinking about diversity in terms of race and ethnicity, but in reality the United States has become diverse in ways that extend far beyond the relatively narrow scope of those two familiar terms of debate. Immigration has also resulted in increased linguistic, cultural, religious, political, and nationality diversity.

As noted, the United States admits immigrants from more than 200 countries and territorial units.[164] The Modern Language Association, using data from the 2000 census, documents "over 300 languages spoken in the United States."[165] Immigration has also resulted in a surge of adherents to religious traditions that, in the past, were not part of the American mainstream.[166] So in 1990, there were only 404,000 self-identified Buddhists in the United States, but by 2008 that number had increased to over a million. Similarly, in 1990 there were only 527,000 self-identified Muslims, but by 2008 there were over 1,300,000.[167]

We also don't often think of it, but immigrants from 200 different countries and territories bring to the United States 200 different national cultures. Each of them has its own cultural premises and traditions as the continuing primacy of national cultures within the European Union suggests. In addition to such national culture premises as, say, the role of women or fate, these 200 countries represent different political traditions. Some immigrants come from countries where national loyalties are expected to trump local attachments. Some come from countries where tribal attachments are paramount and national cohesion an aspiration. Some come from presidential or parliamentary democracies, some from countries with authoritarian or even dictatorial governments. And some come from countries in transition in one or another direction between these two poles.

Yet in spite of the vast differences, over a million new legal immigrants a year, from 200 different countries and with very different racial, ethnic, national, religious, cultural, political, and linguistic backgrounds, must find a way to live in and become integrated into their new home. To state the obvious, it is no easy matter either for them or the United States.

Questions regarding how much accommodation, on whose part, and on what issues remains an ongoing debate, and understandably so. Yet, one basic conclusion is inescapable. It is simply impossible for an established country like the United States, with its own history, culture, political community, and established identity to offer a new home to this large and diverse group of immigrants while also substantially accommodating itself to the diverse linguistic, cultural, and nationality preferences of millions of new immigrants. The absurdity of that idea only underscores the basic point; accommodation of the preferences of new immigrants is legitimate and possible, but only up to a point. Whatever accommodations are made, and they are not insignificant, new immigrants must learn to live in a country that speaks English, has a

political community defined by the tenets of representative democracy, is organized around a modified free market economic structure, and has a culture that emphasizes individual freedom, initiative, and responsibility.

These elements represent the foundation and the core of what makes the United States the country that it is and the reason that tens of millions of immigrants have braved cultural, linguistic, and economic dislocation in order to come here. Of course, not every American adheres faithfully and fully to all these elements, nor must immigrants. However, those elements still represent the center of community gravity in the United States and provide this country with its cultural foundation, a viable ongoing national community, and an established and valued national identity.

It is therefore a legitimate expectation, as well as an urgent practical necessity, for the diverse group of immigrants to America to find some common ground. And that common ground is an American identity rooted its cultural, historical, and political traditions.

With 200 different countries and many different languages, cultures, and nationalities represented among new immigrants, no immigrant group can legitimately claim priority for its language or cultural traditions. On what basis could the immigrants from Vietnam claim that their language and culture ought to be given a privileged position in American life and culture over that of, say, those immigrants from the former Soviet Union? On what basis could immigrants from Sri Lanka claim preferred status for their language and cultural practices over immigrants from Sierra Leone?

They can't. Leave aside for a moment the powerful forces requiring accommodation to the country as it is and the substantial questions of legitimacy and fairness raised by asking a country receiving millions of immigrants to abandon or substantially modify its cultural, political, and national premises and established institutions. No country could sustain its viability or integrity by responding to large-scale immigration in that way. The wide dispersal of diversity across hundreds of immigrant national and culture groups makes the claim for primacy from any one group very difficult as a practical matter.

For most immigrants from the 200 sending countries the choice to learn English and adapt to American cultural expectations is relatively straightforward. Immigrants from most of those 200 countries have no large group of their compatriots here. They do not have substantial numbers of their fellow nationals serving at the highest levels of American's major institutions. They do not have relatively large and vocal advocacy groups defending their cultural, political, or linguistic preferences when those run counter to a general assimilationist outlook. And they do not have large and growing numbers of their fellow countrymen being solicited by both major political parties as a potentially powerful swing vote.

This of course is the theory behind the idea of broadening the diversity of immigrants across national, linguistic, and cultural groups. That theory is premised on the expectation that no one immigrant group will become so large and politically powerful that its push for primacy and exemption from general expectations of integration into the national community will be granted. *New York Times* columnist Ross Douthat supports higher levels of legal immigration and like many others supports much stricter workplace enforcement. Yet he also gives voice to a rarely considered and very important observation:

> "In a better world, the United States would welcome … legal immigrants ... from a much wider array of countries. *A more diverse immigrant population would have fewer opportunities to self-segregate and stronger incentives to assimilate. Fears of a Spanish-speaking reconquista would diminish, and so would the likelihood of backlash*. And instead of being heavily skewed toward low-skilled migrants, our system could tilt toward higher-skilled applicants, making America more competitive and less stratified. Such a system would also be fairer to the would-be immigrants themselves. America has always prided itself on attracting people from every culture, continent, and creed. In a globalized world, aspiring Americans in Zimbabwe or Burma should compete on a level playing field with Mexicans and Salvadorans. The American dream should seem no more unattainable in China than in Chihuahua."[168]

These are immigration goals that are worth trying to achieve. However, the reality is quite different. Since the enactment of the Hart-Celler Act in 1965 with its framing of family preferences, the diversity of legal immigrants arriving in the United States has narrowed. United States immigration policy would benefit enormously by increasing the diversity of its legal immigration streams.

Assimilation's Discontents

Ever since the publication of Milton Gordon's seminal, but instantly outdated, classic *Assimilation in American Life*,[169] assimilation was assumed to be the natural and inevitable outcome of the immigration experience.[170] His book was published in 1964, one year before the passage of the 1965 Immigration and Nationality Act drastically changed American patterns of immigration and substan-

tially increased the ethnic and national diversity of new immigrants.

A year before Gordon published his influential book, Nathan Glazer and Patrick Moynihan published their influential book *Beyond the Melting Pot*,[171] which made clear that ethnic differences did persist and survive assimilation. Both books could not be right and it turned out that neither was.

Speaking in 1983, 20 years after the publication of their book, Glazer and Moynihan said they felt "vindicated" regarding their views on the persistence of ethnicity.[172] That proved to be a premature victory lap. Research on Eastern and Western European ethnics in the late 1980s seemed to confirm Gordon's theory.[173] American ethnics from the first great immigration wave did eventually take their place in all walks of American life, their ethnic identities faded, and they are most likely on census forms to check the box "American." They did intermarry and the range of their political views widened and could no longer be predicted with any accuracy from their ethnic heritage.

Gordon's mistake and the mistake of others who have based their theories and policy prescriptions on the earlier Eastern and Western European immigrant waves,[174] other than not anticipating the law that followed the publication of his book by one year, was to not pay attention to two factors that helped bring about the "inevitable results" that were the basis of his theory. First, and importantly, both leaders and the public were united in their expectations that new immigrants would become American, had strong ideas about what this entailed, and put in place policies and procedures to implement their views. None of those things can accurately be said today.

Also, the period that gave rise to Milton's theory predated globalization. Countries that send the United States the bulk of its new immigrants now have the financial and policy motivation, and the means, to extend their emotional reach to their nationals abroad. And they are making every effort to do so.[175]

Assimilation: Then and Now

This is an issue that arose early in American history.[176] Between 1683 and 1783 approximately 500,000 German-speakers left for Hungary, Russia, Spain, and England. Approximately 125,000 of that total came to British North America. Most landed at Philadelphia, and about three-fourths settled in Pennsylvania. By 1775, one of every three Pennsylvanians was German-speaking. Pennsylvania Germans possessed a strong work ethic, but prior to the Seven Years War they refused to be culturally assimilated. They supported German printing houses, patronized German stores, and taught their children in German.

In 1795, a group of Germans from Virginia petitioned Congress, and a House Committee recommended, that 3,000 sets of laws be published in German and distributed to the states. No vote was taken, and a motion to reconsider at a later date was defeated by one vote. The issue was raised again one month later and after debate, the House finally approved publication of current and future federal statutes in English only. The bill was agreed to by the Senate and signed by President Washington the following month."[177]

Today, as a result of an executive order signed by President Clinton (13166) on August 11, 2000, the federal government must provide "meaningful access" (to federal agencies) by limited English proficient (LEP) persons, and must take reasonable steps to ensure meaningful access to their programs and activities by LEP persons.[178] And of course the 1964 Civil Rights Act has been interpreted by the Supreme Court in Lau v. Nichols and affirmed by the Department of Education memorandum of May 25, 1970, as requiring school districts to take steps to help limited-English proficient students overcome language barriers and to ensure that they can participate meaningfully in the district's educational programs. These initiatives have resulted in legal and political conflict over "language rights," bilingual education, and more recently English language workplace policies.

Language issues and debates are part of a large set of concerns about immigrant assimilation and integration. Opponents of publishing all federal laws in German as well as English used the same arguments and shared the same concerns then, as advocates of immigrants learning English do today. In their view a diverse county needs a unifying language and English has irrevocably established itself as exactly that. Learning English represents a commitment to the American culture and community. Learning English results in greater realization of America's opportunities and this is more likely to help new immigrants become stakeholders. This in turn should increase their satisfaction with their decision to emigrate, their appreciation of their developing levels of economic success, and the country that provided their opportunity.

Assimilation as Stakeholding

Following the influential work of Gordon, many discussions of immigration assume that assimilation is the almost automatically successful conclusion of the process that begins upon arrival.[179] This assumption is also reflected in analyses that tout immigrants' levels of education and economic achievement, including workforce participation and home ownership.

There is a substantial debate now going on about whether the new, large post-1965 wave of immigrants is assimilating.[180] How can we answer this question? Most debate centers on public reporting of what we can measure, and that in turn is related to our understanding of what we should be measuring.[181] A typical view is that assimilation has three different dimensions: social, economic, and political.[182] Of these three, economic assimilation is by far the most widely discussed and measured. Among the things we measure, because we can and think they are important (and they are), include: workforce participation[183] and economic mobility, English language facility (because it has been demonstrated to facilitate economic mobility), educational attainment levels for the same reasons,[184] and home ownership.[185] Social assimilation covers such factors as residential mobility (moving out of "ethnic ghettos") and intermarriage. And political assimilation, the least studied, generally looks to rates of political mobilization and participation, as well as naturalization.

Overall, and with some strong caveats, the consensus view is that, "the American melting pot is just a strong today as it was in the past."[186] The new immigrants and especially their children and grandchildren are getting an education, are learning English to some degree, and many are working and making economic progress. But that generalization has some strong caveats attached to it. A cycle of "downward assimilation" has clearly emerged for some immigrant groups.[187]

Americans can be justifiably pleased with the reality of immigrant education and economic advance. These facts reflect progress toward immigrants becoming stakeholders in American society. But such measures assume that having a stake produces the kind of commitment captured by the term "emotional attachment." Being a stakeholder may reflect a commitment, but that might well be a commitment to wanting more of what you have and keeping most of what you've got. It is, in effect, *instrumental* and it is decidedly self-interested. Instrumental considerations have been the starting point of many newly arriving immigrant groups. But the question is: in a globalized age how can countries like the United States help new immigrants not only become acculturated and instrumentally assimilated, but also emotionally attached.

Assimilation as Emotional Attachment

Assimilation in the cultural or economic sense is not an end in itself. Rather, it is a necessary stepping stone to the real last stage of the immigration process — emotional attachment. A community does not want its members only to feel at home in it and nothing more. Nor does a community want its new members to only develop instrumental attachments. It wants its members, both new and old, to have a sense of attachment and commitment to the community — its practices, institutions, and fellow members. If attachment is the cementing bond of true assimilation, it ought to be the ultimate goal of immigration policy.

How to bring that about is a most difficult but critical national question for the United States, but truly for all of the western democracies faced with the issues of how to integrate diverse immigrant cultures into their own ongoing one. It is a subject that until very recently has been little studied in part because of the focus on assimilation and its traditional measurement.

One thing some groups of new immigrants are not doing is following previous cohorts of immigrants in identifying themselves as Americans.[188] Consider the Pew Hispanic Center's 2002 survey of 3,000 persons of Hispanic or Latino background. The survey asked the respondents about the terms they used to describe themselves and found that "a large majority of Latinos (88 percent) indicate that they ever identify themselves by the country where they or their parents or ancestors were born, for example as a 'Mexican' or a 'Cuban.' They are almost as likely (81 percent) to ever use the term 'Latino' or 'Hispanic.' By contrast, they are much less likely to use the term 'American' (53 percent)"[189]

Now recall, these are respondents whose parents or grandparents or great grandparents came to this country. So, they could be first generation, what sociologists call the 1.5-generation (born abroad but grown up here), second generation, or of even more distant origin. Respondents were asked if they ever referred to themselves as a Mexican (or other specific county of origin), pan-ethnic term such as Latino or Hispanic, or as an American. Asked in this way, each category could and was used. Ninety-five percent of foreign-born Latinos said they had referred to themselves by the name of the country of their parent's origin, among those native-born that number was 74 percent. Eight-five percent of foreign-born Latinos said they referred to themselves using a pan-ethnic term (e.g., Latino); 32 percent of the foreign-born said that they had referred to themselves as American, and 90 percent of the native-born had done so.[190]

Another way to look at these data is to ask if there are any generational effects, and there are. Figures for first, second, and third generation and higher showed the following: 95 percent of first-generation Hispanics used a country of origin self-designation sometimes. That decreases to 82 percent in the second generation and 66 percent in the third. Eighty-five percent of the first generation use a pan-ethnic identification, and that

decreases — but less so over time with 77 percent of second generation respondents doing so and 72 percent of third generation respondents doing so.

Percentages tend to obscure the fact that we are discussing large numbers of actual people — numbers in the millions. The Census Bureau's American Community Survey in 2009 estimated that there are 38.5 million foreign-born persons in the United States, of whom 53.1 percent or 20.5 million are from Latin America.[191] Since the Pew Hispanic survey is a stratified sample meant to reproduce, within a small margin of statistical error, the general Hispanic population of the United States, we can use their figures to gain some idea of the actual numbers involved with some confidence. So to say that 88 percent of the sample has referred to themselves primarily in terms of their nationality of origin is to say that more than 18 million people have done so. To say that 81 percent have used a pan-ethnic term to identify themselves means that more that 16 million persons have done so.

One other set of questions that the Pew study asked, puzzlingly only of those not born in this country, concerned which country respondents considered their homeland, their country of origin or the United States. Sixty-two percent choose their country of origin.[192] When reminded that "some countries allow people to be legal citizens of their country, even if they are also U.S. citizens," and asked if they were citizens of their home country, 86 percent said yes.[193] Approximately 15 percent said they had voted in elections in their "home" country since arriving here. It is a matter of regret that the survey either choose not ask or else report the same questions for native-born Latinos as it did for almost all the other questions it asked.[194]

Chosen Identity: Parity and Primacy

There are several ways to look at these data. One can say that self-identification as an American, which does reflect some level of integration and attachment, increases over generations. Yet, one can also point with equal authority to the fact that country-of-origin and pan-ethnic identifications strongly persist into even the third generation and beyond. The question then becomes which, if any, of these self-identifications is primary?

The Pew survey asked respondents which, if any, of the three identifications they tended to use as their only identification, or which they tended to use first, second, or third.[195] Our interest here is in those who pick one of the three either as the only or first identification. Those who use their country of origin identification "only" or "first" constitute 54 percent of the total sample. Those who use a pan-ethnic identification first or only constitute 24 percent of the sample. Finally, those who use an American identification only or first constitute 21 percent of the sample.

Translating these percentages to actual people means that after two or more generations here, almost eight million people still self-identify primarily as members of their ancestral country. And it means, that after two generations or more, 52 percent or seven and a half million still make use of the country of origin or pan-ethnic identification (see below).

These figures do change with length of time in the United States. Among the foreign-born, 68 percent and 24 percent prefer a country of origin or a pan-ethnic identification to an American one. Among the native-born, those numbers are 29 percent and 23 percent — lower, but still a majority choosing a non-American identity. They are also related to citizenship status. The Pew survey found, "As might be expected, citizens are much more likely than non-citizens to identify as 'American' (33 percent vs. 3 percent). *Nonetheless, Hispanics who are American citizens are still more likely to identify themselves primarily by country of origin (44 percent) than to identify primarily as an 'American' (33 percent) or as a 'Latino' or 'Hispanic' (22 percent)*."[196]

If we talk in terms of real people, at the time the Pew survey was taken there were about 35 million Hispanics in the United States of whom 70 percent are native born or naturalized citizens.[197] Using the Pew figure of 66 percent of their sample of Hispanic citizens who choose either a country of origin identification or an Hispanic or Latino but not an American identification would translate to over sixteen million American citizens of Latino or Hispanics original, who identify themselves as other than American.

The Pew survey discussed above deals with adults, but it is interesting to compare that data with a study that deals with children and young adults. Portes and McLeod found that 25 percent of second-generation children in South Florida and Southern California in 1992 identified themselves with a "non-hyphenated Latin Nationality," e.g., Mexican, despite the fact that they had been born and grown up in the United States.[198] Likewise, Rubén Rumbaut surveyed over 5,000 children from immigrant families. Half were U.S.-born children of immigrants, half were foreign-born children who immigrated here before they were 12 (the 1.5 generation).

Rumbaut offered each child the opportunity to self-identify by either: (1) national origin (e.g., Jamaican, Hmong), (2) hyphenated identity (e.g., Mexican-American, Filipino-American, (3) a plain American identity, or (4) a pan-racial/ethnic identity (e.g. Hispanic, Latino, black). He found a definite trend of adopting a hyphen-

ated American identity from the foreign-born children to those born here (from 32 percent to 49 percent). These findings, he states, are indicative of a significant assimilative trend. He notes the most assimilative groups appear to be the Latin Americans, *"with the very notable exception of Mexicans. Among the U.S.-born less than 4 percent of Mexican American-descent youth identified as American (the lowest proportion of any group*)."[199]

Moreover, among second-generation Mexicans, "a very substantial number identified as Chicano, virtually all of them U.S. born and all of them in California; in fact a quarter of all Mexican-descendant second generation students self-identified as Chicano, a historical and problematic identity unique to that group." In other words, compared to other second-generation immigrant children, Asians for example, Mexicans were far more likely to select a pan-racial/ethnic identity that *did not* include some American component.

In 2009 the Pew Hispanic Center released a major study of Hispanics it calls "millennials," those between the ages 16 and 25.[200] They number about 7.5 million persons in the United States.[201] The sample focused on those born abroad, but now living in the United States (first generation); those born in the United States, but with one parent of the first generation (second generation); and those with both parents born in the United States (third generation). The director of the center said, "If you want to understand what America will be like in the 21st century, you need to have an understanding of how today's young Latinos, most of whom are not immigrants, are growing up."[202] If so, the results are not encouraging for those who put their faith in the inevitability of assimilation.

When asked about the *first* term they used to describe themselves, 72 percent of first-generation "millennials" named their country of origin (calling themselves "Mexican" or "Salvadoran," for instance), 22 percent named the term Hispanic or Latino, and 3 percent chose the term American. For the second generation, those figures are 41 percent, 21 percent, and 33 percent, respectively. For the third generation 32 percent still identify with their country of origin, 15 percent describe themselves as Latino or Hispanic, and 50 percent now describe themselves as American.[203]

The report further finds that,

> "Young Hispanics *are being socialized* in a family setting that places a strong emphasis on their Latin American roots. More say their parents have often spoken to them of their pride in their family's country of origin than say their parents have often talked to them of their pride in being American — 42 percent versus 29 percent. More say they have often been encouraged by their parents to speak in Spanish than say they have often been encouraged to speak only in English — 60 percent versus 22 percent. The survey also finds that the more likely young Latinos are to receive these kinds of signals from their parents, the more likely they are to refer to themselves first by their country of origin."[204]

The list of facts that could and have been examined that might help to explain these factors is varied. They include the ubiquity and ease of international travel and communication; large absolute numbers of immigrants from one national or linguistic or cultural group; assertive outreach by foreign countries to "their" nationals; lowered support among institutional and governmental leaders for assimilation and integration of new immigrants; a failure of governments, at least until recently, to develop and support policies that encourage and facilitate immigrant integration; the experience of discrimination; and a concerted effort by an alliance of progressive advocates to argue that maintaining home cultures is as, or more, important than becoming assimilated.[205]

These factors considered both separately and together help to explain these troubling results. Yet it is the cumulative results themselves, from many studies, as noted above, that should give us sober pause. They strongly suggest that identification with an American identity, and the emotional attachment it reflects, are not taking hold among groups that account for the highest percentage and absolute numbers of both legal and illegal immigrants.

Whatever advances these groups are making with regard to English language acquisition and workforce participation, the data analyzed above, all of it from established researchers and major research organizations, suggest there is a decided gap in their actual emotional attachment to this country. Broadening the diversity of immigrant groups in the United States is not the sole answer, or even most important one, in responding to this issue. Yet to the extent that it would mitigate the temptation that arises among immigrant groups and politicians when one cultural, ethnic, or linguistic group becomes numerically dominant, it is important and useful to consider.

Part 3: Penalties, Politics, and Implementation

Abstract: *Blue ribbon task forces have a close relationship with the political leaders, committees, and organizations that shape legislation and policy. Yet, they believe their analyses are beyond partisan politics. In reality, they are immersed in the political process, as they must be if they are to have influence, which is a primary purpose for their existence. This, the last part of our three-part analysis of "comprehensive immigration reform" and grand bargains, explores the relationship between expert advice and the political process.*

Blue ribbon immigration task force experts proceed on a very different basis from those with legislative and political responsibility. This can be summed up in the fact that experts give advice, while political leaders make policy. The two have different constituencies as well. Experts are primarily responsible to their own views and substantive integrity, policy makers are responsible to the public.

The "political process" therefore can legitimately be seen, in substantial degree, as part of the democratic process. Insulating the immigration decision process from the democratic process of politics, as all three task forces propose, would act to mute the public's more direct impact on policy. Experts have their own policy views and preferences and it is not clear why they should be accorded more weight.

The debates surrounding immigration reform raise many issues in the context of a proposed legalization/enforcement grand bargain. Few are more difficult, misunderstood, and misrepresented than the subject of penalties. Just what constitutes a penalty is not as obvious as it is often presented. Fines, for example, must be balanced against future earnings. Paying taxes must be balanced against access to Social Security. And does it really count as a penalty to have to learn English?

The political process is often contentious and does not stop once an immigration bill has been signed into law. Administrative rules on a large number of important issues continue to be debated and adjudicated long after presidential signing ceremonies are over. If war is the continuation of politics by other means, then implementation is surely the continuation of policy debate and bargaining beyond the enactment of legislation.

The three blue ribbon task forces reviewed in this analysis hope that their suggestions will be influential and maybe even instrumental in any new immigration legislation. Toward that end they have gathered notables, many of whom have considerable government experience, academics, and advocates to debate the issues and reach common ground. Having done so, those recommendations will carry the weight of their institutional legitimacy.

They are in that respect a curious hybrid. These panels have a close relationship with the leaders, committees, and organizations that shape legislation and policy. Yet they attempt to maintain their distance by presenting analysis they believe to be beyond partisan politics. They are immersed in the political process, as they must be if they are to have influence, but present themselves a having a stance seemingly independent of it.

Of course, their analysis is based on the questions they ask. These cannot escape the gravitational pull of politics. The answers they provide are shaped by the questions that will dominate legislative and public debate. As noted, some questions — for example what is the optimal number of immigrants that this country should consider admitting – are not taken up because they are unlikely to gain much traction in the committee hearings and draft legislation which is the ultimate measure of task force clout and, when successful, an affirmation of their purpose.

In this section of our analysis, we explore some facets of the political process as it relates to immigration reform legislation. We begin with the distinction between the immigration advisory and legislative process, the different perspectives associated with each, and the critical implications of these differences.

Immigration policy is an emotionally charged as well as a politically contentious area. The assumption of all three task forces is that all of the emotional heat generated by public political debate stands in the way of sound, prudent policy. As a result, all of them recommend some mechanism to remove immigration policy from the heat of the political process. Each suggests some version of a quasi-public entity that would shield good immigration policy from the distortions introduced by strongly held partisan views, thus providing "expert" legitimacy to "sound" policy. Whether this is feasible, and to what extent this is desirable, will be the subject of our analysis. After all, another way of understanding the removal of immigration policy from political debates is that it also removes it from the democratic process.

Democratic as it may be, the political process often obscures important assumptions and inferences.

Terse legislative language often summarizes and reflects decisions hidden in plain sight. Nowhere is this clearer than in the concept of "earned" legalization. That term is critical to any grand bargain because it draws a distinction in supporters' views between amnesty and reparation. Paying a "penalty" is critical to discussions of legalization on both moral and legitimacy grounds. Few support just giving amnesty, period. Advocates make the case that by paying penalties illegal immigrants earn their new legal status. Just what these penalties are, what costs they really impose on those seeking legalization, and whether on balance they measure up to a reasonable understanding of "earned" will be the subject of our analysis.

Finally, those interested in the content of immigration policy should be under no illusions that the task force recommendations, and whether or not Congress accepts them, is the only, or even the most important part of the story. Understandably, there is a great deal of attention given to the actual provisions that make their way into any legislation, including that concerned with immigration. Yet what many people fail to realize is that that the legal process is far from over once a bill has been passed and signed into law. Indeed, drawing up the statutory rules that will govern the application of the legislation in particular cases can either reinforce or subvert what Congress says or thinks it has accomplished.

Removing Immigration from Politics?

The grand bargains of the kind reached in unofficial efforts such as the three blue ribbon task forces, and even official efforts like the Jordan Commission, differ in fundamental ways from the policy debates that take place in Congress and in the public arena. Task forces proceed on the basis of polite conduct. Congress proceeds on the basis of the clash of strong partisan views. Task forces proceed on the basis "expert consensus;" Congress proceeds on the basis of raw political power. When their work is completed, task force participants return to their universities, foundations, and think tanks; members of Congress return to their constituencies. A task force produces a report; Congress produces national law.

Given the stakes, the forces operating in the two arenas could not be more different. Most task forces bring people together with the explicit hope, reflected no doubt in discussions surrounding their invitations, to find common ground. In accepting those invitations, invitees sign on to make a good faith effort to help realize their hosts' consensus ambitions. The narrow range and gentle dissents published at the conclusion of the reports suggests that most members take this responsibility seriously.

Congress and the president, on the other hand, operate on a very different calculus, that of power and representation. There is no expectation that all the members on a committee will make a good faith effort to find common ground. Indeed, Congress, unlike the three immigration task forces, does not have its membership carefully screened and then selected on the basis of balance, temperament, or willingness to be polite guests having accepted their host's invitation.

They are selected in the very rough and tumble, winner-take-all election process, and represent citizens who can take their jobs away every two or six years, unless their constituency is safe and they are returned to power without great effort. Yet, as every political scientist knows, this is a formula for strong partisan views to reflect the (liberal or conservative) preferences of those who keep reelecting them. Such seats provide added partisan impetus because of the seniority system in Congress, whereby those who are most often reelected rise to chair powerful committees and exert disproportionate influence on the legislative process. During the heath care debate, the White House Chief of Staff commented on this distinction that certainly applies to the immigration debate: "Let's be honest. The goal isn't to see whether I can pass this through the executive board of the Bookings Institution. I'm passing it through the United States Congress with people who represent constituents."[206]

Long-serving representatives and senators whose constituents fervently want some form of legalization are apt to exert their energies in that direction. Those from districts opposed to amnesty are likely to push, hard, in that direction, unless they view their role as that of policy broker between strong factions, as John McCain did during the 2007 immigration debate. Such a role may burnish credentials for a presidential run by suggesting bipartisan leadership, but staunch believers in their immigration positions are not looking to compromise on what they feel are essential elements of their policy views.

The general outlook for any variety of immigration reform rests on the constellation of political and psychological forces. Its chances reflect the public's remembered history with the issue, the relative balance of political power in each house of Congress, and the willingness of key leaders on both sides of the political aisle to broker agreements. Obviously, if there is not sufficient political muscle to push legislation through, compromise to some degree must be sought. The exact nature of any agreement is the complicated outcome of relative political numbers, the use of procedural devices to advance the view of one side or the other, vocal and assertive interest groups, public sentiment expressed through polls, demonstrations, and other forms of public pressure, the degree

of re-election security that members of Congress feel, and the risks they are willing to take.

The political process described above is of course part of the country's democratic process. It is the way that Americans make their views felt in between elections. It is a messy, often contentious process that on divisive issues can produce cheerful winners and disgruntled losers. It is not based so much on extensive, nuanced, or evenly considered merits or liabilities of different positions, as it is on essentialist conclusions and overall judgments.

Those who take leadership positions in the immigration debates — be they in Congress, interested organizations, or public analysts and pundits — are part of the process by which public views develop, coalesce, and consolidate. Critics argue that public sentiment can be misdirected, public views can be misinformed, and public perceptions of the issues involved distorted, and they are right. Nonetheless, no better mechanism for mobilizing and encouraging the democracy-enhancing expression of public views has yet been developed.

Commissions and roundtables, however distinguished their members, however formal or informal their mandate, and however conventional or innovative their recommendations, remain, in the end, advisory. And this is, in a very critical way, as it should be because blue ribbon task forces are not democratic. They are "elite" gatherings, staffed by long-time political players and bursting with "expert" participants. These participants may well represent, as we have discussed above, a version of "expert consensus" that excludes some questions and views. On the other hand, the political process, whatever its faults, has the virtue of giving space to the full range of views on the issues and allowing their forceful expression.

Experts are rightly skeptical of the political process, since it often introduces rhetorical distortions to what they see as their more nuanced consensual positions. They are also much more likely to value the views of other experts. It is perhaps for these reasons that all three blue ribbon immigration panels suggest mechanisms to help shield immigration policy from the political process.

Quasi-Public Immigration Commissions: Safe Harbor or Political Caldron?

Immigration policy has traditionally generated contentious national debates. It is a complicated subject with many related parts, most of which are enveloped in their own heated policy disputes. Added to that is that immigration issues seems to gather policy momentum over time and build to a political crescendo that results either in the climatic passage of a bill (the 1986 IRCA legislation) or a climatic failure (the 2007 immigration reform bill). As the Brookings-Duke report argues, "tough choices that now — in the case of permanent admissions — are avoided, only to fester for decades; or — in the case of temporary workers — get made hastily, without adequate debate and public scrutiny."[207]

It is therefore tempting to remove some of the contentious immigration issues from the political domain. And that is what all three blue ribbon task forces and the 2010 Democratic immigration proposal suggest be done. The MPI task force suggests the creation of a Standing Commission on Immigration and Labor Markets."[208] The CFR report seconds the MPI recommendation.[209] The Brookings-Duke task force suggests its own version of the idea, an "Independent Commission on Immigration."[210] Bloomberg News reported that "Senate Democratic leaders are drafting a measure that would let a commission recommend levels of employment-based visas and green cards — and require Congress in certain cases to vote if immigrant labor is deemed out of line with demand. While the commission would have limited influence over the skilled-immigrant market for technology and other industries, it would have a major role in regulating low-skilled foreign labor."[211] That report proved correct; these suggestions found their way into the 2010 Democratic Party proposals for immigration "reform."[212]

Of the two recommended independent commissions, the one proposed by the Brookings-Duke task force is by far the most extensive. They envision an agency "with a broad charge to function as a research, deliberative, and agenda-setting body addressing multiple aspects of immigration."[213] The MPI Standing Commission on Immigration and Labor has, as reflected in its name, a much more narrow focus. It, too, would be charged with carrying out ongoing analyses, but only those focused "on labor market conditions and trends."[214] However, their analysis and associated recommendation seem to have overlooked the fact that immigration levels, even those reflecting labor market conditions and trends, have enormous political and cultural consequences.

The MPI report has high hopes that its experts will be able to defuse difficult and contentious political debates. They note that "immigration policymaking often flounders on the lack of consensus about a basic question: How many and what kinds of immigrants should the United States admit?"[215] The first is almost never discussed. The "what kind" question would seem to turn on matters of national self-image, a sense of the boundaries involved in maintaining and preserving American national identity, and how different levels of immigration fit in with those views. That debate has not been directly addressed in immigration debates, but it needs to be.

The MPI report recognizes this basic fact, at least at first. It acknowledges that, "in some ways the answers are subjective and not easily resolved," but immediately backtracks on this understanding by adding "But many *can* be quantified." They continue, "Systematically gathering and examining information of the costs and benefits, and impacts of immigration would establish a foundation for informed decision-making and public debate about immigration admission levels and policies."[216] The phrase "would establish" simply reflects the fact that the data and debate have not yet been undertaken, and there is good reason to be skeptical that these proposed commissions are the place to do it.

Both blue ribbon reports are hopeful that expert analysis can mitigate the contentious immigration debates that periodically take place in the United States. The Brookings-Duke report suggests that, as a result of having "a permanent professional staff of demographers, sociologists, economists, and other social scientists, the Commission also would be expected to issue advisory studies and reports on the diverse impacts of immigration on American society. These might include analyses of federal aid to jurisdictions impacted by immigrants, the adequacy of border security measures, demand for temporary workers, and public opinion about immigration. Properly constituted and supported, the commission would be the venue where more dispassionate attention would be paid to the overall effects of immigration, *not just on the economy but on American society*."[217]

The MPI and Brookings-Duke reports' faith in expert analysis is appealing, but misunderstands the nature of policy analysis and its limits. The act of choosing and framing the specific problem to be analyzed, data limitations, and the role of inferences at every step of analysis are all problems that are well known in the policy analysis and social science community. Moreover, drawing policy implications from basic research is a process fraught with uncertainty, inferential leaps, and ultimately subjective judgments. Analysts connected with the proposed commissions will not be immune to them.

Moreover, in social and policy analysis, one study, however well it deals with the common research issues just noted, cannot in any way be considered dispositive. Social science research does not prove anything. It can, in the best case, provide evidence that, along with other evidence, may lend confidence to our understanding of an issue. In the disciplines that contribute to immigration research, this is a process characterized by disputation carried out in books, journals, and conferences. The idea that research from the proposed commissions will be any more substantively authoritative, except insofar as they will carry a political imprimatur that advocates on one side or another of an issue will use, is more hopeful than realistic.

All of these considerations precede what are arguably the more important political dimensions of such commissions. Both task forces acknowledge that even with the commissions they propose, Congress will be the ultimate locus of immigration policy and legislation. Moreover, as the Brookings-Duke report acknowledges, "The Commission would not remove politics from immigration policy. The push and pull of diverse interests would appropriately continue, and Congress would ultimately determine any policy changes."[218] The question is whether that "push and pull" would find its way into the proposed commissions themselves.

The Brookings-Duke report professes not to be worried. Why? The law establishing it "should require that the Commission be bipartisan and composed of an odd number of members, nominated by the President and confirmed by the Senate, who serve staggered and extended terms of at least seven years."[219] Of course the term "bi-partisan" actually means that members would be drawn from both political parties and perhaps, though not necessarily, have some members unaligned with either political party. Political parties, broadly speaking, have political views that influence their policy preferences, and immigration is no exception to this rule. So from the start, the commission charged with producing "dispassionate" analysis and discussion is likely to be very political, if not overtly partisan.

Mandating an odd number of members is probably meant to facilitate majority recommendations. However majority views are not likely to be the calming influences that the recommenders hope for, especially if they are 5-4 decisions. Narrow decisions are unlikely to instill either confidence or legitimacy. And how issues are framed for reseach and analysis is likely itself to become an issue. A split committee might accept or recommend their version of a grand bargain, but this too would hardly instill confidence or bolster legitimacy.

The Brookings-Duke report places its hope for commission comity on "the stature of its bipartisan members, who would be appointed by the President and confirmed by the Senate."[220] Perhaps. However no president who wishes to be reelected, or see the views of his party on an issue prevail, can ignore the political implications of recommendations that will be made every two years to add or subtract yearly immigration quotas or change the numbers within the categories that make it up. This is especially the case when any changes might help or hurt a politically important constituency.

The dynamics of the three blue ribbon immigration task forces discussed above give us some inkling of

what might be involved. However a much more useful and sobering example of the politics of an ongoing quasi-governmental commission charged with doing research and making recommendations on sensitive and decisive issues is the U.S. Commission on Civil Rights. The president and Congress each make four appointments and not more than four members of either party may serve at one time. Without getting into specific detail, it is fair to say that the commission has in recent years been the venue of fierce struggles for majority dominance, the shutting out of minority members when that has been achieved, the appointments of "independents" as a way to by-pass the four party member rule, and abrupt reversals of research questions and the focus of public hearings when a ruling majority has been overthrown. It's a very sobering precedent.

In view of the above, in what surely must rank as one of the oddest pieces of analysis, the Brooking-Duke report said that, "Some Roundtable members expressed concern that such a commission would be captured by the narrow interests that have dominated today's divisive and stalemated immigration debate. Others of us thought that such a scenario might have been plausible 20 or even 10 years ago, when a few activists and insiders had this terrain largely to themselves. Today, the American public and its elected officials are much more engaged with a range of immigration issues. *Of course, this fact has itself contributed to the emotionalism and intensity of the current debate*."[221]

So, widespread public and elected official involvement in the immigration debate has contributed to its emotionalism and intensity, but will at the same time operate as a barrier against the narrow interests that dominate today's divisive and stalemated immigration debate. The fact that today there are more activists and persons with strong views on these issues both at the level of the general public and government officials would seem to add to the risk that such commissions would become politicized. Yet even if this were not the case, the politics of these proposed commissions would be intense because of the highly charged recommendations they would be making.

The MPI report says that its commission would "make recommendations to Congress *every two years* for adjusting immigration levels."[222] The Brookings-Duke report agrees and says its commission "would be charged with issuing *a biennial report* to Congress with specific recommendations on numerical ceilings in the various permanent and temporary admission categories and on any changes in the nature of those categories. Congress would then be required to act within a specified period, and either adopt the Commission's recommendations, amend them, or replace them."[223] The CFR report, while supporting the MPI position, argues that the two-year reports are all right, "but a truly flexible system *would require adjustments over fairly short periods as economic conditions fluctuate*."[224]

It is important to pause here a moment and consider just what these reports are requiring. They are putting into place a process whereby every two years, and sooner if the CFR preferences were adopted, the commission would propose recommendations on the most controversial elements of immigration policy, how many immigrants to be given legal entry status and how many of these will be family preference entrants, skill based, or other kinds of visas. And Congress must then take up the recommendations and pass the appropriate legislation, or not. This, to repeat, will take place every two years.

In the past, the debates on American immigration policy have heated up every few decades or so. After the 1986 IRCA legislation, despite immigration laws passed in 1990 and 1996, immigration did not become a major national issue again until 2007. These proposals guarantee that unavoidable immigration fights over that issue's most basic questions will be a reoccurring event every two years. No sooner will one congressional decision have been rendered, that another will immediately be looming. If any immigration system were designed to channel and increase political conflict, this would be it.

"Earned Legalization" and the Question of Penalties

Those favoring legalization draw a strong distinction between amnesty and earned legalization and their reasoning is instructive. The CFR report refers readers back to Webster's Dictionary, which defines amnesty as "the act of an authority (as a government) by which pardon is granted to a large group of individuals."[225] The report then adds, "In other words, amnesty means wiping a transgressor's record clean — it is a free ride."[226] This "in other words" addition is not part of the dictionary definition, but a characterization of that definition by one of the report's authors, Richard Land.[227] However, the realities of amnesty are a bit more complicated than simply wiping the slate clean.

Inherent in the concept of amnesty is the concept of forgiving, by which persons who commit political or legal breaches are held harmless for their past transgressions. This is often done in the context of reconciliation and healing, when they are put forward to repair significant tears in the social fabric. Reconciliation efforts after the American Civil War, or the toppling of the apartheid

South African government, and contemporary attempts to get Iraqi or Afghani insurgents to use political rather than military processes to press their views, are cases in point. In these kinds of circumstances, without reconciliation the ability of the entire society to move forward as a viable entity is at risk. In these cases, forgiving mitigates against the dangers of the continuing erosion of social trust and cohesion.

However, in the case of illegal immigration a strong case can be made that it is the government itself that has torn the country's social fabric and breached the trust of its citizens. A very large majority of Americans do not support illegal immigration. Similarly large majorities want the government to enforce immigrations laws and secure American borders. Yet in the paradoxical world of amnesty advocates' moral arguments, enforcement can only be legitimate if coupled with legalization.

Forgiving illegal immigration does not quite measure up to the enormous stakes that are part of the kinds of national reconciliation efforts noted above in, say, apartheid South Africa. After all, if effective workplace enforcement, over time, did result, as it might well do, in a diminution of the problem and the return home of those who were no longer able to get jobs, no one could reasonably argue that the fabric of American society had been in grave danger of a second dissolution. It is perhaps for this reason that some form of restitution, (i.e., earned legalization) has become central to legalization arguments.

Blue Ribbon Task Forces And the Question of Penalties

The Jordan Commission made an interesting and important observation about any legalization process that is worth recalling because it is a point that nowhere appears in any of the three blue ribbon task force reports. They drew a distinction between the backlog of those who are waiting and have family members that have been legally admitted and those family preferences that would be derived from the legalization of formerly illegal immigrants. They recommended that:

> "priority for clearance of the backlog should go first to the spouses and minor children of LPRs who entered lawfully under the regular immigration preferences. *Only afterward* should expedited admission be offered to the spouses and minor children of LPRs who entered under one of the legalization provisions of the Immigration Reform and Control Act."[228]

Their reasoning was that the families of formerly illegal, but now legalized immigrants were already in the country, while those family members of immigrants who had come here legally often remained in the "home" country. Additionally, the Jordan Commission noted, "*The legalized have already received special treatment in obtaining amnesty*. To further reward their earlier illegal entry by giving equal or higher priority to the entry of their relatives sends the wrong message at a time in which the United States must obtain greater control over unauthorized entry."[229]

The Jordan Commission's view that by virtue of having obtained amnesty, illegal immigrants have "already received special treatment," though accurate, is a rarely heard sentiment. That special treatment is found in the ability to stay and live in the United States with all the opportunity, infrastructure, quality of life, and political freedoms that that entails. To simply mention these advantages is to underscore the enormous, and often taken for granted, value of being able to live as a resident of the United States. Against these advantages, amnesty advocates point to the fact that such legalized immigrants should and will pay a price — a form of restitution for their violation of American immigration laws. Most often, the suggested penalty entails paying a fine, learning English, paying any back taxes owed, undergoing a criminal background check, and applying for readmission from outside of the United States. All three task forces support some variation of these penalties.

The MPI report takes a minimalist position regarding the issue of penalties. It argues that the eligibility date for those covered by legalization should be "as recent as possible," thus ensuring that were this standard to be adopted, many more persons would be motivated to enter the country without documentation to secure the benefits of legalization. Their view is consistent with the recent immigration bill introduced in Congress by Rep. Gutierrez.[230] That bill would make the effective date of the legalization "on the date of the enactment of this Act."[231]

The MPI report says, "The lessons of IRCA suggest that the legalization process should be simple, with an eligibility date that should be as recent as possible. Requiring applicants to provide elaborate documentation of their history in the United States invites misrepresentation."[232] That task force report thus takes the odd position that because requiring documentation of work history and time spent in the United States invites "misrepresentation," otherwise known as fraud, it should be discarded. It also contains no "touchback" requirement, wherein those wishing to be legalized must return to their countries of origin and then apply for legalization.

The MPI report buttresses its preference for earned legalization with another rather odd point. It states, "Moreover, amnesty implies a serious threat of criminal prosecution and conviction. Like it or not, for the millions of illegal immigrants in the United States, there has never been a serious threat of criminal prosecution."[233] Their logic here seems to be that because tracking down millions of illegal immigrants and subjecting them to "criminal prosecution" has not been a high priority, legalizing them cannot be considered an amnesty.

It's true illegal immigration is not considered a capital crime or a felony. On the other hand, in the decade 1988-2008 over 14 million illegal immigrants were caught and subject to legal proceedings because of their violation of immigration laws.[234] Repeat offenders have been jailed. Would risk of deportation count as a "serious threat"? At any rate, the idea that, because 10-12 million illegal immigrants have not been the targets of a vast effort to find them and subject them to criminal prosecution, legalization cannot be an amnesty makes no real sense.

What Does Earned Legalization Mean?

The concept of "earned legalization" invites the question: What does "earned" mean? The idea that legalization is not a "free ride" implies there will be some genuine cost or loss involved. Or to put it another way, legalization will involve some form of "restitution." For example, the CFR report says "Americans are rightly dismissive of amnesty, but there is a much more compelling argument for earned legalization, for allowing individuals through their actions to demonstrate that *they are willing to make sacrifices* for the privilege of full membership in American society."[235]

This may involve money, time, additional obligations, or the forfeiting of incentives or rewards that would have been available otherwise. Moreover, inherent in the idea of earned legalization is the expectation that, on balance, the penalties incurred as part of restitution will not be easily trumped by the benefits obtained. This does not mean that penalties and benefits must be equalized, only that the penalties imposed must be more real than symbolic.

The three blue ribbon task forces are unanimous in their view that legalization must be "earned." The CFR report notes that "Illegal migrants would have had to demonstrate a long, virtually uninterrupted period of gainful employment, pass criminal and national security background checks, pay substantial fines, and demonstrate basic mastery of English. In a number of versions of the legislation, those who qualified would only be eligible initially for a temporary work visa, and would need to live and work in the United States for another significant period before being permitted to seek permanent residence."[236] This is the so-called "back of the line" provision that is meant to keep legalized immigrants from cutting into the line of those awaiting status as LPRs who have "played by the rules." This "back of the line" provision is also a key element of the 2010 Democratic proposal for immigration reform.[237] Of course, while they are waiting at the "back of the line," newly legalized immigrants will enjoy all the benefits of living and working in the United States.

The MPI report says that a legalization process "should include registration for work eligibility in the United States, accompanied by a background security check, English-language requirements, and payment of a substantial fine for illegally entering the United States."[238] Elsewhere the MPI report adds, "the ideal process would involve … payment of taxes, and good moral character in order to earn permanent residence and, ultimately, citizenship."[239] And finally, the Brookings-Duke report supports the launching of a "legalization program requiring unauthorized workers who have been in the country for five or more years to: pay a fine; provide evidence of current employment and a steady work history, payment of taxes, and good moral character; pass a background check; and study English and learn about U.S. history and government."[240]

This list of proposed "penalties" raises several basic questions. Do the penalties proposed for earned legalization measure up to a real sacrifice on the part of those for whom "the slate is being wiped clean"? On balance, are the advantages that accrue to those being legalized much greater that the penalties that are being suggested? And perhaps paradoxically, are the penalties proposed really penalties at all? The evidence suggests that the answer to all three questions is: not really.

Fines and Comparative Earnings

The most obvious penalty is the payment of a fine. The 2007 Kennedy legalization bill (S1639) provided for a fine of $1,000 for each principal applicant and an additional fine of $500 for each dependent, along with a $1,500 processing fee and a $500 state impact fee. Dependents were also required to pay a $1,500 processing fee. For a family of four that would be a total cost of $8,000.

More recent proposed legislation lowers that figure considerably. Rep. Gutierrez's 2009 immigration bill sets the fine at $500.[241] It exempts persons who were under the age of 16 at the time that they entered the United States and have not reached the age of 35 at the time of the enactment of this legislation.[242]

Let us however, use the larger $1,000 penalty for our analysis. This figure represents a substantial sum, but it cannot be viewed in isolation. Consider the financial implications of remittances from immigrants to their home countries. These are sums clearly over and beyond the cost of living and working in the United States. In 2008, the year in which the recession began to take hold, remittances to Latin America from the United States totaled over $49.9 billion.[243] A survey of 5,000 Latin American immigrant adults conducted in 2008 found that remittances had slowed from previous years. Before the start of the recession in 2006, 73 percent of that sample had sent money home to a family member in Latin America, but two years later the proportion had declined to 50 percent.[244] Nonetheless, the average amount sent had increased from 2006 ($300) to 2008 ($325) and the average frequency of such remittances also increased from 12 in 2006 to 15 in 2008.[245] Forty-seven percent of those sending remittances were illegal immigrants.[246]

These numbers can only be suggestive, and obviously the current recession in the United States would further adversely affect these figures. Nonetheless, in 2008, as the recession took hold the average immigrant sender remitted $325 to his home country and did so an average of 15 times. That amounts to an average of $4,875 over and above the money needed to live and work in the United States, and it is more than half of the cost of obtaining Z-visas for a family of four under the requirements of the 2007 immigration bill.

Further perspective on the relative costs of immigration penalties and fees is found in questions asked of the 5,000 Latin American adults about their employment history. Asked how much they made in their last job in Latin America, the average was $160 a month.[247] Asked how much they made in their first job in the United States, the figure was $900 a month, an increase of over 400 percent. Asked what their monthly income was at the time of the survey, the average was $1,600,[248] an increase of over 900 percent from their last Latin American job. Again, granting limitations to any survey and the use of averages, the results are unequivocal. Working in the United States represents an enormous increase in personal income for immigrants compared to the jobs they held in their countries of origin. Moreover, the immigrants, like many Americans, can look to a rise in their incomes, as reflected in the difference between the average pay of first jobs and those held at the time of the survey. Legalized immigrants would quickly earn more money than they paid in penalities.

Obviously, the current recession has hurt the earning power of immigrants and Americans alike, but recessions do end and when they do, the upward advancement of earning power, over the long term, is highly likely. At any rate, for immigrants the gap between earnings "at home" and in the United States would be considerable over an immigrant's years of peak work productivity.

Overall, therefore, the basic point seems fairly clear. The level of fines and fees put forward as part of requiring illegal immigrants to incur costs or penalties as part of their "restitution" for having broken the law are, from a strictly economic perspective, a very good deal for legalized immigrants. They stand to make many tens of thousands of dollars more income by being allowed to legally work in the United States than they would have had they not emigrated. Moreover, by living and working in the United States they have already started enjoying its economic and political benefits.

Yet the past and future benefits to those being legalized are not economic alone. As noted, the ability to live and work in the United States confers enormous benefits in the form of opportunity, infrastructure, quality of life, and political freedoms. What is the value of the possibility of substantial economic mobility for oneself and one's children? How much more secure can one feel living in a country that takes the rule of law seriously? How valuable is world-class medical care, or free schooling for your children? To simply ask these questions is to underscore the enormous, but rarely discussed, benefits of life in the United States, for all its stresses and difficulties.

Moreover, legalized immigrants receive another very important benefit, the ability to sponsor immediate and extended family members for permanent resident status in the United States. As noted, the three blue ribbon immigration task forces reached different conclusions about the advisability of narrowing family preference categories. The Brookings-Duke report suggested that those categories should be narrowed and capped. The MPI report disagreed. And the CFR report was unable to reach a conclusion on the matter.

Very interestingly, none of the three task forces, and not one participant in the dozens of task force members, suggested that legalized immigrants be enjoined from adding their non-immediate family members from obtaining a "family preference" visa. *Specifically requiring illegal immigrants who are legalized to forego the ability to sponsor their non-immediate family members for family-preference visas would meet the definition of imposing a substantial and real penalty.*

Keep in mind that those in a political position to make their views felt see this issue very differently. It is not only that the President is on record as opposing the Brookings-Duke task force suggestions, but also that Democratic congressmen are likely to push for widening family preferences, not narrowing them. Rep. Gutierrez's

newly introduced immigration bill reclassifies the spouses and minor children of LPRs as "immediate relatives" thus exempting them from caps or quotas [249]

Paying Taxes Owed as a Penalty

Several of the task forces put forward the payment of back taxes as one of the penalties the legalized immigrants will, and should, incur. Certainly, one could say that paying taxes on income that has been unreported would represent a sacrifice. And one could add that it entails a financial loss. Yet, it can also be argued that the payment of back taxes owed represents a step to cure a criminal and tax liability that brings the person into compliance with the law that should have been followed in the first place.

Here we get into some tricky moral, financial, and administrative issues. There is no question that financial compensation for work requires the person to file an income tax return and pay any taxes due. Failure to do so is a criminal offense. In allowing illegal immigrants to file returns and pay any taxes owed, the government is, in effect, creating a tax amnesty. State governments have used this device to gain revenues,[250] so there is a legitimate basis for extending the concept to the immigration area.

Yet it should also be kept in mind that this is a second example in which illegal immigrants are being held harmless for breaking the law, this time federal and state income tax laws (living in the United States without having gone through the visa application process for being a LPR is the first). It is true that such persons will incur a financial loss by paying any back taxes owed. However, a closer look suggests the economic equities here too are not what they appear at first glance.

First, in paying any back taxes, illegal immigrants are just paying what they presumably owe. They are bringing themselves to the status quo as it should have been operating all along. In this there is a parallel to allowing illegal immigrants to "cure" their violation of immigration laws that they should have adhered to. Yet, note that the task force proposals call for a "payment of taxes;" they say nothing of late fees and penalties. For ordinary Americans and LPRs, the failure to file returns and not pay taxes on income involves late charges[251] and substantial penalties.[252]

Specifically requiring illegal immigrants to pay the late fees and penalties associated with having not filed would meet the definition of imposing a substantial and real penalty.

A further issue here is that many illegal immigrants are paid in cash or, if not, are not major users of banks or checking accounts. It will therefore be very difficult to check any immigrant representations on this subject against bank or checking records. It is unlikely in the extreme that any proposed bill will mandate the IRS to ensure that such back tax records are full and accurate, or that there would be the political or legal will to set up an IRS task force and hire thousands of auditors to ensure accurate compliance.

Finally, there is the issue of whether given currently operating tax programs, illegal immigrants would owe any taxes at all. It is entirely possible that in a number of cases they would be owed a rebate! I am referring here to the provisions of the Making Work Pay tax credit[253] and the Earned Income Tax Credit,[254] both of which are government transfer programs for which formerly illegal immigrants might well be eligible. In any event, to figures these matters out for 10-12 million illegal immigrants will require the government to hire a very large number of accountants and put into place safeguards against fraud.

The Issue of Social Security Access

Finally, in considering the equities of paying back taxes, mention needs to be made of Social Security benefits. Inaccurate Social Security numbers are widely used by illegal immigrants. As a result, unless they are paid completely off the books, their employers withhold Social Security taxes to be held in an account bearing the (inaccurate) number of the illegal immigrant. In filing income tax returns, illegal immigrants would also be eligible to claim self-employment income derived from a trade or business conducted in the United States.

Legislation has been filed during the last several Congresses that would deny illegal immigrants credit toward Social Security for any money earned while a person worked in violation of immigration laws.[255] That bill died in committee, and is unlikely to ever be reported out of committee, passed by either or both houses of Congress, or signed into law.

What is likely is that there will be pressure to conclude a bilateral "totalization" agreement with Mexico, as the United States now has with 24 other countries, mostly European and Asian advanced industrial democracies.[256] These agreements allow countries to keep track of, and give appropriate retirement credit for, money earned by workers from either of the contracting countries in the other country's work force. However, these agreements cover persons who are legally entitled to work, and do not cover those who work in violation of either country's immigration laws.

In 2002 the Bush Administration began negotiations with Mexico to reach agreement on crediting money earned in the United States by Mexican nationals.[257] A study undertaken by the GAO confirmed these negotiations and noted the following:

> *"The proposed agreement will likely increase the number of unauthorized Mexican workers and family members eligible for Social Security benefits.* Mexican workers who ordinarily could not receive Social Security retirement benefits because they lack the required 40 coverage credits for U.S. earnings could qualify for partial Social Security benefits with as few as six coverage credits. In addition, under the proposed agreement, more family members of covered Mexican workers would become newly entitled because the agreements usually waive rules that prevent payments to noncitizens' dependents and survivors living outside the United States."[258]

Who and how many illegal immigrants would be covered? The GAO notes that "SSA's actuarial cost estimate assumes the initial number of newly eligible Mexican beneficiaries is equivalent to the 50,000 beneficiaries living in Mexico today and would grow six-fold over time. *However, this proxy figure does not directly consider the estimated millions of current and former unauthorized workers and family members from Mexico and appears small in comparison with those estimates."*[259]

This GAO study was conducted in 2002, and we now have a better idea of the precise numbers of those "estimated millions of current and former unauthorized workers," or at least the current part of that equation. Those numbers are estimated at about 10-12 million and there are no discussions, much less reliable numbers, of the persons who are former unauthorized workers. That number too is likely to be substantial.

In the context of our analysis of penalties and equities in considering the relative costs and incentives involved in legalization grand bargains, several points stand out. It is possible to develop legitimate arguments on both sides of the question as to whether illegal immigrants should be able to receive Social Security benefits after legalization. It is a fair and principled position to argue that persons working in the United States in violation of immigration laws should not reap any additional benefits from breaking the law, beyond the money they earn at work. It is also a defensible position to argue that having worked, even though illegally, illegal immigrants are entitled to the economic fruits of their labors.

There is little doubt where President Obama stands on this. His presidency is premised on the importance of "fairness."[260] Beyond this policy organizing principle, the president is on record as having supported allowing illegal immigrants to gain access to Social Security. The occasion was a vote on a motion to table an amendment to the Comprehensive Immigration Reform Bill (S.2611) that would have ensured that "persons who receive an adjustment of status under this bill are not able to receive Social Security benefits as a result of unlawful activity." Sen. Obama voted to table that amendment, thus helping defeat it.[261]

This is not the appropriate place to analyze the relative merits of each position, but the factual circumstances that are relevant to our analysis of penalties and equities seem clear. As it stands now, illegal immigrants incur an economic loss by using false Social Security numbers to gain employment. They contribute to the system, but at present are not able to access those funds. This is a different circumstance than is the case of sales and other taxes that go into public treasuries to support services (schools, police, infrastructure) from which illegal immigrants do benefit. And, additionally, these unclaimed funds are figured into analyses of Social Security solvency and are at present a net plus.

The point here is that as circumstances now stand the contribution to, but inability to benefit from, Social Security taxes withheld constitutes a clear economic penalty associated with working in the country without authorization. Were an agreement to be reached between the United States and Mexico, and should legalization occur, what had before been a clear penalty would immediately be transformed to a substantial gain. Were that to occur, the relative cost of the any fines or fees associated with earned legalization would be decisively rebalance away from relative loss toward relative gain.

Requiring illegal immigrants to forfeit Social Security funds would meet the definition of imposing a substantial and real penalty.

Penalties in Name Only

As noted, lists of losses incurred in connection with legalization always involve one or more of the following elements: paying a fine, paying back taxes, undergoing a criminal background check, "going to the back of the line," learning English, and applying for readmission from outside of the United States. These elements are always presented in a list that includes paying substantial penalties and in the context of "earning" legalization. The unstated but clear implication is that these requirements impose substantial burdens on those being legalized and thus are part of the "sacrifices" that illegal immigrants are being called upon to make. Yet it is not at all clear that many of these items are really penalties or constitute substantial sacrifices.

For example, the task forces call for illegal immigrants to undergo criminal and security background checks. These kinds of checks are already undertaken for

those following immigration law and applying for LPR status. Having illegal immigrants undergo such checks imposes no new or higher requirement on them, and does not constitute a sacrifice.

The task forces also propose that candidates for legalization show a steady work history. Again, it is now clear that showing a work history involves any sacrifice, other than getting an attestation from an employer or showing a copy of any employment payment checks.

Another frequent proposal is that legalized immigrants wait a period for time before being able to covert from their new, provisional legal status to LPR status. This is often termed "the back of the line provision" and President Obama has endorsed it.[262] The purpose of these proposals is to ensure that legalized immigrants do not received the desired LPR status before those who have been following American immigration law requirements and are awaiting their permanent visas. So, the recently introduced immigration reform bill requires those persons who are legalized to wait six years after the enactment of the legislation to adjust their status to LPRs.[263]

It is highly questionable whether this wait constitutes a penalty or a significant loss to illegal immigrants. The reason that potential legal immigrants apply for a visa is because they want to live and work in the United States and take advantage of the many opportunities available. Those living and working in the United States illegally are *already* benefitting from many of these advantages. Furthermore, since any legalization process essentially does change the status of those who were previously in violation of the law to a legal status, illegal immigrants who become legalized have already jumped to the head of the line from the standpoint of those waiting legally to enter the country and enjoy the fruits of being here.

Another related but somewhat different requirement is the so-called touchback provision. This would require illegal immigrants to leave the country after being provisionally legalized and apply for permanent legal status from their home countries. It is unclear just what this provision is meant to accomplish. The idea was proposed during the 2007 immigration debate, and appears to put legalized illegal immigrants in the same situation as legal applicants in needing to apply for permanent status from outside the country. Note that this provision differs from the "end of the line" provision discussed above, wherein legalized immigrants must wait six years before adjusting their status to LPRs. That proposal imposes a waiting period so that legalized immigrants don't jump the waiting line for LPR status; the touch-back provision makes legalized immigrants leave the country for a brief period to file their LPR applications, a situation that parallels, but is not in its most important elements similar, to those following the rules and applying for LPR status without benefit of prior legalization.

The parallel is basically misleading because legalized immigrants would be legally able to reside and work in the United States before they became LPRs. Further, they would be able to travel to and from the United States on their new legalized status, something that those applying through regular legal channels would not be allowed to do. It is not surprising that the most recent 2009 immigration bill completely drops this requirement.[264]

Moreover, as we will examine in more detail in a subsequent section, the exact definition and thus implementation of touchback became a matter of dispute and alternative policies. As will be made clear, the words that appear in congressional legislation must be translated into actual rules. And those rules become a matter of fierce debate resulting in circumstances where the actual requirements are only loosely connected to the understanding that participants thought they had reached when the legislation was debated.

The president has expressed views on both sides of this issue. During his presidential candidacy he filled out a questionnaire for a progressive organization that contained the following Q & A:

> **Q:** Do you support the "touchback" requirements of previous comprehensive immigration reform (CIR) legislation that would require undocumented immigrants to return to their countries of origin in order to normalize their status?
>
> **A:** I am disinclined to support touchback requirements because they are symbolic and likely to discourage participation in an earned legalization program.[265]

Is Learning English a Penalty?

Finally, there is the question of whether learning English and about U.S. government and history involves a substantial cost to those illegal immigrants who want to become legalized. All three blue ribbon task forces, as well as the President, endorse provisions that call on illegal immigrants to "learn English" and become familiar with American history and political principles. The CFR report endorses the view that legalizing immigrants should be required "to be in the process of studying English and learning about U.S. history and government."[266] The Brookings-Duke report supports a "legalization program requiring unauthorized workers who have been in the country for five or more years to: … study English and learn about U.S. history and government."[267] The MPI

report says that a legalization process "should include … English-language requirements."[268] The 2009 immigration bill required applicants for legalization to show that they were "satisfactorily pursuing a course of study to achieve an understanding of English and knowledge and understanding of the history and government of the United States."[269] And the more recent 2010 Democratic immigration proposal does the same.[270] We will address what these terms actually meant shortly.

The rationale for this requirement is both practical and political. There is now a large body of evidence, summarized in the CFR report,[271] that strongly links English language facility with better economic outcomes for immigrants. Given that economic advancement is one key measure of assimilation, this requirement provides benefits to both immigrants (more economic success) and the country (more successful assimilation). There is another critical element here as well, and that concerns public support for immigrants "becoming American." In the minds of many people, one critical element of that process is learning English. So on the question of learning English, there is uniformity among the blue ribbon task forces and consensus at the level of American political leadership.

However the question here is whether such a requirement belongs in the lists of costs that will be imposed on those seeking legalization, or as the CFR report puts it, "*they are willing to make sacrifices* for the privilege of full membership in American society.[272] Here, as is the case with other elements of earned legalization, it is not at all clear that learning English constitutes a "penalty."

Certainly learning English is time-consuming and difficult. Moreover, for many immigrants time spent doing so is time that is lost for other pursuits. So, too, learning English may pose an additional burden for those immigrants who are sojourners and plan to return "home" at some point, yet want legalization for the benefits it will provide. Balanced against these costs are the unmistakable economic and social advantages of English acquisition. Additionally, most of the legislation that addresses this issue makes provision for the federal government to economically help state and local efforts to provide language and civic education. For example, the 2009 immigration bill asserts as a finding that "The government of the United States has an obligation to reaffirm its commitment to effective immigrant integration by supporting the teaching and promoting the learning of English."[273]

Overall, the penalties imposed on those seeking legalization seem much less demanding than commonly presented. The costs imposed are in every instance balanced by gains and in some cases the latter outweigh the former. Overall, the concept of "earned legalization" appears to rest on a very thin level of requiring those seeking legalization "*to make sacrifices* for the privilege of full membership in American society."[274]

The Implementation Crucible

All three blue ribbon task forces emphasize finding common ground on big ideas. Those big ideas may be "enforcement," "comprehensive reform," "earned legalization," or "assimilation," to name several that are present in one form or another in all three. A naïve outsider might conclude that we will have fixed our "broken" immigration system when the recommendations of one or all of these panels are adopted by Congress and become law. This is not the case.

The problem here, of course, is not with the task force's big ideas, but what happens to them in translation from legislative language to statutory rules covering their application. The CFR reports says of the failed 2007 immigration reform bill that, "by the time of its eventual defeat, the Senate bill had become so complex that effective implementation by the Department of Homeland Security and other agencies *would likely have been impossible*."[275]

Implementation is a major element that makes task forces, however diverse, limited models for the real world of political process and power. The Brookings-Duke conveners are well aware of this difference. They write that, "while the task we set for ourselves has been demanding, even more arduous is the task facing policy-makers and elected officials if they are to craft an equitable and prudent set of immigration policies." They continue:

> "We would emphasize that the devil here is truly in the details. Implementation is everything, and will depend on the right combination of policy judgment and good faith."[276]

Consider the discussion above on provisions for learning English and civics. The alert reader will notice that the specific recommendations of the blue ribbon task forces and the specific provisions in the recently proposed legislation do not require that candidates for legalization, or for a later change to LPR status, actually have to *learn* English or *demonstrate* an understanding of American history and government. Rather they only require that such persons be engaged in the process of trying to acquire such knowledge. How many hours, how many times a week, and with what level of results are nowhere mentioned. This is another case where the actual rules for implementation define the real requirements that appear in general form in congressional legislation. At any rate, the indeterminate

time frame for levels of participation and actual results all tend to decrease the costs to illegal immigrants for this particular set of requirements. This example provides a blunt example of the fact that implementation counts.

IRCA English: A Cautionary Tale

The distance between the congressional concept and debate, on one hand, and the reality of actual implementation, on the other, is not a new story. As part of the first large general amnesty for illegal aliens, the sponsors of the Immigration Reform and Control Act of 1986 (IRCA) tried to include English language and civics instruction for those who wanted to become legalized. Their efforts provide an important history lesson and one that is essential to understand if the same mistakes are not to be repeated.

In 1986, a key sponsor of the legalization legislation, Jim Wright (D-Texas), proposed a two-year waiting period before legalization in which candidates could work, but also learn English and civics.[277] He wanted to help immigrants fit into American society and thought they could best do so by learning English and civics. That argument won support from both liberals and conservatives and helped to break the legislative impasse that had stalled the bill.

Yet in reality illegal immigrants got credit for *attendance*, not *mastery*. The INS issued "no clear standard for defining 'satisfactory pursuit' in the issuance of class certificates."[278] Those charged with teaching immigrants English and civics balked at certifying students who didn't actually master the material, but INS officials "reported having to insist that teachers release certificates after 40 hours regardless of proficiency levels."[279]

President Reagan signed IRCA into law on November 6, 1986. However, no sooner had the bill been signed then the agreements that had allowed it unraveled. Contentious debates broke out over the exact meaning of "civic instruction" for immigrants. The nature of the proposed education program and testing sparked heated controversy. All questions concerning these understandings had been left to the INS to define and further specify. Money allocated for civic and language education was in turn made available to various governmental (schools, state offices) and non-governmental (labor, religious, ethnic, and legal) organizations. Each hired its own teachers, who in turn, initially, determined the conditions for "satisfactory" progress and completion. To put it gently, standards differed.

After much debate, the content of the program was turned over to ethnic and immigrant advocacy groups.[280] Attendance, not demonstrated competence, warranted a certificate of satisfactory completion. What had started out as a minimum of 60 hours completion of a proposed 100-hour program floundered on the view that such requirements were "excessive" and "burdensome." INS officials finally settled on 40 course hours of a 60-hour program. The full course of instruction had been reduced by 40 percent and the amount of actual time necessary to attend in order to "pass" within that now much-downsized course was reduced a further 20 percent. Pickus understatedly notesthat the implemented programs did not "strengthen citizenship and naturalization in the manner envisioned by Jim Wright."[281]

The Baker study that the Rand Corporation and the Urban Institute jointly sponsored was the most focused and useful analysis of the IRCA legalization implementation process.[282] Their instructive focus is what happened to the bill after it had been signed into law. I list, but do not analyze, the "challenges" as the study terms them of discerning and implementing Congress' language and intent and the administrative responses to them.

The legalization program was to begin six months after the bill became law, and it did, but there were no reliable estimates of how many would apply. There were also great difficulties in mounting an intense but short-term government program, coordinating all the many agencies involved, keeping track of a highly mobile population over a process that could last several years, and difficulties in staff training to process applications that had three separate steps,[283] each with its own rules, and resolve disputes.[284] These were the basic structural issues that arose with dealing with 2.8 million applicants and can be expected to arise again more forcefully in any program to legalize 10-12 million persons.

The INS published its official rules for Phase I (application) four days before the process was scheduled to start. Rules for the other two phases were similarly late. The study notes that, "continual changes in these rules took place at the insistence of the courts, Congress, and as a result of lessons learned by the INS along the way."[285] The INS had to define each of the eligibility standards in program regulations. Such terms as "continuous residence," "known by the government", and "brief, casual absence" had to be operationally defined, and adjudicators in the field given a rulebook.[286] Each rule went through three stages: draft, proposed, and final, and at each stage the meaning of words and terms were debated and changes made.[287]

Perhaps not surprisingly, every one of the INS standards met with significant challenges, primarily in the courts. The net effect of these challenges was to "broaden the size of the eligible population."[288] The standards for "admissibility" also resulted in substantial litigation. Applicants could be excluded if they were "likely to become

a public charge."[289] This raised the contentious issue of whether past use of family assistance could be used as an indicator of "likelihood" going forward. Litigation ensued.

Another issue was the waivers granted for the use of fraudulent documents for immigrants who left and reentered the country. Over 54,000 applications for such waivers were received. At first, the INS would not grant waivers, but reversed itself in the face of a class-action suit against the rule.[290]

If the Rand/Urban Institute study conducted by Baker demonstrates anything, it is that in the American political process, congressional mandates, even in the form of passed and signed legislation, are not synonymous with settled policy. Those understanding this fact will not turn their attention away from the process that follows a president signing an immigration bill into law. The post-signing process involved in administering a law can be as disputatious as the process that led up to its enactment.

Conclusion

The three blue-ribbon task force proposals we have examined contain many ideas worth further thought. A transition to higher levels of educated and skilled immigrants seems sensible, as does the modification of existing family reunification policy. A focus on immigrant assimilation, integration, and ultimately emotional attachment are clearly important linchpins of any immigration policy. Efforts in these areas might well be smaller, achievable immigration reforms, especially when compared with grand bargains.

A closer examination of the grand bargains proposed by all three task forces reveals that they are premised on assumptions that aren't necessarily accurate. "Earned legalization" is based on the premise that those seeking to become legal immigrants will, as part of the bargain, incur costs for having broken immigration laws. Yet none of the three task forces actually goes beyond listing the so-called penalties to actually analyze them. In almost all cases, the penalties contain a good deal less cost to illegal immigrants than the benefits they will get.

Workplace verification is another critical part of the proposed grand bargain that does not hold up well to close scrutiny. The technology involved is far from reliable or widespread, and won't be for some time. Legalization would immediately change the status of those who qualify out of the estimated 10-12 million illegal immigrants. In reality, enforcement delayed, because of capacity gaps, creates an imbalance in the advantages that each party to any grand bargain receives, and weighs the rewards heavily toward those who favor legalization and away from those who favor enforcement.

It is also clear that some elements of what emerges as the blue-ribbon task force consensus would benefit from being reexamined. The task forces agree that an "enforcement first" strategy is not a viable option. Yet they base their views on unspecified "values" and on the assumption that such a policy would require "mass deportations." This is inaccurate. Workplace verification, which all three task forces enthusiastically support, is, when it works, an attrition strategy following exactly the same logic as an enforcement-first strategy. Illegal immigrants unable to find employment because of effective verification procedures will find it hard to remain in the United States.

It is critical to focus resources on improving the workplace verification procedure in any event. The United States remains the preferred destination for many millions of potential immigrants worldwide. And one sobering point of agreement among all the task forces is that legalization, or even the consideration of it, raises hopes that whatever the rhetoric regarding "one-time" or "one last time" efforts, the simple fact of considering or doing it raises the hope and even the expectation that it will eventually happen again. In short, future high levels of illegal immigration will not be solved by legalization, grand bargains or not.

The three blue ribbon task forces address some important issues but shy away from at least two controversial questions: What is the right number of immigrants to allow into the United States each year, and should we broaden the diversity of the immigrant stream so that no one ethnic, language, or cultural group dominates the number of immigrants admitted. Aiming for clout, it is understandable that the task forces bypass these questions, but they deserve serious consideration nonetheless.

The closest they come to addressing the first question is to propose an increase in the yearly number of LPR visas — green cards — granted. This is done in large part to accommodate the other changes they propose, like a shift to skills-based admissions. Yet none of the task forces asks how many new immigrants the country can sustain or help integrate into the American national community. There is, of course, no magic number, but the trajectory of task force recommendations and past adjustments in immigration numbers have been going ever upward, never just maintaining new higher numbers, and certainly not decreasing them.

Nor have any of the task forces focused on the growing imbalance among ethnic, cultural, and linguistic groups coming into the United States. This imbalance is a direct result of family preference policy and past legalizations. The additional legalization of an estimated 10-12 million illegal immigrants, most from countries and cultural and language groups already disproportionately represented in the American immigrant population, will only increase the problem. Very large numbers of one ethnic, cultural, or linguistic group create incentives to press for accommodation to their assimilation preferences and an equal incentive because of political considerations for an established community to grant them.

This is more of an issue when the concept of assimilation or integration itself is under pressure from various quarters. All three task forces tout learning English and workforce participation, and it is true that such progress gives immigrants a stake in American life. Yet none of the task forces consider that having such a stake can be largely instrumental, and what they ought to be thinking

about is emotional attachment. Enjoying the economic fruits of American life is not the same as identifying as an American. And there is troubling evidence that we need to devote more time to figuring out how that can be accomplished.

The task forces themselves operate in an odd, ambiguous, and ambivalent political universe. They are deeply enmeshed in Washington policymaking and advice. They are staffed by notables who have worked for the government in the past and might well do so again. And their reason for existence is to influence government policy.

Yet they present themselves as being, in important ways, above or beyond politics. Theirs is expert advice, untainted, they believe, by the rough and tumble of partisan politics. This is not as true as they apparently imagine. Each of the task forces has an institutional setting that includes a point of view. Each makes choices about personnel, focus, and policy analysis. Experts, no less than politicians, have their own understandings, frames of reference, and policy preferences. Individually and collectively, they may well be better informed, but when it comes to making judgments about immigration decisions that will affect the American national community for years to come, not necessarily far wiser.

Some think otherwise and suggest giving more weight to experts in devising immigration law. This is tempting given the loud, divisive, and distorting rhetoric that can accompany political debates about major immigration legislation. Still that raucous din is the sound of ordinary Americans demanding that their voices be heard and their preferences considered. For many years, most Americans have made it repeatedly clear that they are dismayed about illegal immigration, do not want to reward it, and want to stop it. They are also firmly on record as being open and hospitable to new immigrants, but wanting those who are offered a home and membership in the American community to learn about it, identify with it, and choose to become part of it. Many in positions of power, however, have not been listening.

Shielding any new or future immigration changes from the political process would give more weight to expert opinion, but it would also deprive ordinary Americans their direct, legitimate voice. And, given the likely consideration at some point of a major new legalization program sold on the same basis as past efforts, if there ever was a time for those voices to be heard, this would be it.

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> "[H]ow do we give incentives for both those — those on both sides of the debate to want to bring the other side along …. And the idea here is simply to give those in favor of legalization a reason to want to move work place enforcement along as quickly as possible, and those in favor of work place verification, to have an incentive to actually agree to some form of a legalization program."

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[126] MPI report, p. 36.
[127] MPI report, p. 127.
[128] The 620,791 (estimated) family-based admission visas consisting of 520,791 visas for immediate family admissions of U.S. citizens and LPRs (including spouses and minor children of both groups and parents of American citizens), and 100,000 family-sponsored visas that include adult married and unmarried children of U.S. citizens and their dependents.
[129] In place of the current, but as they show, inaccurate, statutory levels of LPRs of about 167,000, they propose 750,000 employment visas, distributed among "direct permanent" (150,000) and provisional visas (600,000), who could adjust their status to that of an LPR in time.
[130] CFR report, p. 85.
[131] CFR report, pp. 86-87.
[132] Reid-Schumer-Menendez Draft, "Conceptual Proposal for Immigration Reform," p. 18, http://voices.washingtonpost.com/ezra-klein/Conceptual%20Outline%20of%202010%20Bill%20%28R-S-M%29.pdf (accessed June 18, 2010).
[133] Randall Monger and Macreadie Barr, "Nonimmigrant Admissions to the United States: 2009," Department of Homeland Security, Annual Flow Report, April 2010, Tables 1, 2, http://www.dhs.gov/xlibrary/assets/statistics/publications/ni_fr_2009.pdf (accessed June 20, 2010).
[134] Chad Christian Haddal, "Foreign Students in the United States: Policies and Legislation," CRS, October 11, 2006, figure 4, http://trac.syr.edu/immigration/library/P1071.pdf (accessed June 18, 2010).
[135] The IIE relies on surveys of its member institutions, so its numbers should be viewed with that fact in mind. Their survey gives an estimated overall figure of 671,616, while the Department of Homeland Security, presumably in a position to have an actual rather than an estimated count put the figure at 859,169. See, for example, "Fall 2009 International Student Enrollment Survey," November 2009, http://opendoors.iienetwork.org/file_depot/0-10000000/0-10000/3390/folder/78747/Fall+2009+International+Student+Enrollment+Survey+Report.pdf (accessed June 18, 2010).
[136] Institute of International Education, "Open Doors 2009 Report on International Educational Exchange," Table 16: International Students by field of study 2007/08 & 2008/09, http://opendoors.iienetwork.org/?p=150814 (accessed June 18, 2010).
[137] Reid-Schumer-Menendez Draft, "Conceptual Proposal for Immigration Reform," pp. 20-21 (emphasis added).
[138] Randall Monger and Macreadie Barr, "Nonimmigrant Admissions to the United States: 2009," Department of Homeland Security, Annual Flow Report, April 2010, Table 2.
[139] Among the taskforce analyses here, only the CFR report was unable to reach a consensus about whether their preferences should be modified. See CFR report, p. 91.

[140] CFR report, p. 64 (emphasis added).
[141] MPI report, p. 39.
[142] There is some ambiguity in the bill's language here. The bill first states that the 100,000 figure is "for each fiscal year the PUM is authorized" implying that it could be enacted for any number of years. The bill then goes on to state, "aliens subject to the worldwide level specified in section 201 (g) for PUM immigrants shall be allotted visas during the first thee fiscal years following 6 months after enactment" of the bill. Both statements are found at H.R. 3729, p. 331.
[143] H.R. 3729, pp. 331-333.
[144] MPI. "Side-by-Side Comparison of 2006 and 2007 Senate Legislation and 2009 CIR ASAP Bill," p. 10; see also H.R. 4231, pp. 331-333, http://www.migrationpolicy.org/pubs/CIRASAPsidebyside.pdf (accessed June 20, 2010).
[145] Office of Homeland Security, *2008 Yearbook of Immigration Statistics*, Washington, D.C., Office of Immigration Statistics, August 2009, p. 92.
[146] Michael Hoefer, Nancy Rytina, and Bryan C. Baker, "Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2008," Department of Homeland Security, Office of Immigration Statistics, February 2009, Table 3, http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_ill_pe_2008.pdf (accessed June 20, 2010).
[147] Transcript, "Racial and Ethnic Intermarriage in the United States," Population Reference Bureau, May 2010, http://discuss.prb.org/content/interview/detail/5061 (accessed June 20, 2010).
[148] Office of Homeland Security, 2008 Yearbook of Immigration Statistics, Washington, D.C., Office of Immigration Statistics, August, 2009, Table 2.
[149] Elizabeth M. Grieco, "Race and Hispanic Origin of the Foreign-Born Population in the United States: 2007," American Community Survey Reports, U.S. Census Bureau, January 2010, Figure 1, http://www.census.gov/prod/2010pubs/acs-11.pdf (accessed June 20, 2010).
[150] Steven Camarota, "Immigrants in the United States, 2007: A Profile of America's Foreign-Born Population," Center for Immigration Studies, November 2007, http://cis.org/immigrants_profile_2007 (accessed October 29, 2010).
[151] Jennifer M. Ortman and Christine E. Guarneri, "United States Population Projections: 2000 to 2050," U.S. Census Bureau, 2009, http://www.census.gov/population/www/projections/analytical-document09.pdf (accessed June 20, 2010).
[152] For the High Net immigration series, the numbers are assumed to run from 1.55 million in 2010 to 1.71 million per year in 2020. For the next decade this number steadily increases to 1.94 million in 2030, reaching 2.16 million per year in 2040. The final figure in this series is 2.38 million in 2050. Available at http://www.census.gov/population/www/projections/2009hnmsSumTabs.html (accessed June 20, 2010).
[153] For the Low Net Immigration series, beginning in 2010, net immigration levels are assumed to stand between 1.16-2.25 million per year over the next decade. Between 2020-2030 this goes from 1.26-1.43 million per year, and from 2030-2040 it reaches 1.59 million per year. By 2050, the low net immigration figure stands at 1.76 million per year. Available at http://www.census.gov/population/www/projections/2009lnmsSumTabs.html (accessed June 20, 2010).
[154] Technical aspects of the four levels of project may be found at http://www.census.gov/population/www/projections/methodstatement09.pdf (accessed June 20, 2010).
[155] Jennifer M. Ortman and Christine E. Guarneri, "United States Population Projections: 2000 to 2050," U.S. Census Bureau, 2009, pp. 3, 9.
[156] H.R. 4321, Sec. 302, pp. 307-308.
[157] There is some ambiguity in the bill's language here. The bill first states that the 100,000 figure is "for each fiscal year the PUM is authorized" implying that it could be enacted for any number of years. The bill then goes on to state, "aliens subject to the worldwide level specified in section 201 (g) for PUM immigrants shall be allotted visas during the first three fiscal years following 6 months after enactment" of the bill. Both statements are found at H.R. 3729, p. 331.
[158] Liz Sidoti, "Obama challenge: Keep Hispanic support," Associated Press, November 28, 2009.
[159] Pew Hispanic Center, "2007 National Survey of Latinos: As Illegal Immigration Issue Heats Up, Hispanics Feel A Chill." Washington, D.C., December 2007, Figure 2; p.22, http://pewhispanic.org/files/reports/84.pdf (accessed June 20, 2010).
[160] Alan Fram, "AP-Univision Poll: Immigration Splits Americans," Associated Press, May 13, 2010. The AP-Univision Poll may be found at: http://www.ap-gfkpoll.com/pdf/AP-Univision%20Poll%20May%202010%20Hispanic%20Topline_ALL.pdf (accessed June 17, 2010).
[161] Latino Decisions, "Latino voters show massive support for health care reform-including public option," November 30, 2009, http://www.latinodecisions.com/ (accessed June 20, 2010).
[162] Public Law 89-236, October 3, 1965, http://library.uwb.edu/guides/USimmigration/79%20stat%20911.pdf (accessed June 20, 2010).
[163] Milton M. Gordon, *Assimilation in American Life: The Role ole of Race, Religion and National Origins*. New York: Oxford, 1964; Richard D Alba, *Ethnic Identity: The Transformation of White America*. New Haven, Conn.: Yale University Press, 1990.
[164] Department of Homeland Security, Office of Immigration Statistics, "2008 Yearbook of Immigration Statistics," p. 15, Table 3.
[165] The Modern Language Association Language Map, "A Map of Languages in the United States," http://www.mla.org/map_main (accessed June 20, 2010).
[166] Will Herberg, *Protestant, Catholic and Jew: An Essay in American Religious Sociology*. New York: Doubleday, 1956.

[167] Barry A. Kosmin and Ariela Keysar, "American Religious Identification Survey (ARIS 2008), Hartford, Conn., Trinity College, March 2009, http://b27.cc.trincoll.edu/weblogs/AmericanReligionSurvey-ARIS/reports/ARIS_Report_2008.pdf (accessed June 20, 2010).

[168] Ross Douthat, "The Borders We Deserve," *The New York Times*, May 3, 2010. (emphasis added).

[169] Gordon, *Assimilation in American Life*.

[170] For example, "Assimilation does appear to be progressive and irreversible." See Stephen Steinberg, "The Melting Pot and the Color line," in Tamar Jacoby (ed.) *Reinventing the Melting Pot: The New Immigrants and What It Means to be an American*, New York: Basic Books, 2004, p. 242

[171] Nathan Glazer and Patrick P. Moynihan, *Beyond the Melting Pot: The Negroes, Puerto Ricans, Jews, Italians, and Irish of New York City*, Cambridge, Mass.: Harvard and MIT press, 1963.

[172] Jane Perlez, "'Beyond The Melting Pot, Moynihan and Glazer Feel Vindicated," *The New York Times,* December 3, 1983.

[173] Alba, *Ethnic Identity*.

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[175] Dovelyn R. Agunias (ed.) *Closing the Distance: How Governments Strengthen Ties with Their Diasporas*, New York: Migration Policy Institute, 2009; see also Laureen Laglagaron, "Protection through Integration: The Mexican Government's Efforts to Aid Migrants in the United States," Migration Policy Institute, January 2010, http://www.migrationpolicy.org/pubs/IME-Jan2010.pdf (accessed June 20, 2010). One example of this outreach initiative on the part of countries that send large numbers of its nationals abroad is a program started by the Mexican government to enroll children born in the United States of at least one parent who is Mexican as a dual citizen. See http://www.latinodecisions.com/. Andrea Castillo, "Mexican parents obtain dual citizenship for U.S.-born child," *The Sun News* (Macon, Ga.), February 3, 2010.

[176] The analysis that follows draws on Alan Houston, "Population Politics: Benjamin Franklin and the Peopling of North America," The Center for Comparative Immigration Studies, University of California, San Diego, Working Paper 88, December 2003, pp. 31-32, http://ccis.ucsd.edu/PUBLICATIONS/wrkg88.pdf (accessed June 20, 2010).

[177] Dennis Barron, "The Legendary English-Only Vote of 1995," at http://auditor.co.polk.ia.us/pdf/german-by-one-vote.pdf (accessed June 20, 2010). See also Dennis Barron, *The English-Only Question: An Official Language for Americans?* New Haven, Conn.: Yale University Press, 1992.

[178] Executive Order 13166: Improving Access to Services for Persons with Limited English Proficiency, August 11, 2000, http://www.justice.gov/crt/cor/Pubs/eolep.php (accessed June 20, 2010).

[179] Gordon. *Assimilation in American Life*, p. 81.

[180] *Cf.*, Richard Alba and Victor Nee, "Rethinking Assimilation Theory for a New Era of Immigration," *International Migration Review*, 31:4 (1997), pp. 826-874.

[181] Mary C. Walters and Tomas R. Jimenez, "Assessing Immigrant Assimilation: New Empirical and Theoretical Challenges," *Annual Review of Sociology*, 2005, pp. 105-25.

[182] Jennifer L. Hochschild and John H. Mollenkopf (eds.), *Bringing Outsiders In: Transatlantic Perspectives on Immigrant Political Incorporation.* Ithaca, N.Y.: Cornell University Press, 2009.

[183] Tamar Jacoby, "The New Immigrants: A Progress Report," in Tamar Jacoby (ed.), *Reinventing the Melting Pot: The New Immigrants and What It Means to be an American*, New York: Basic Books, 2004, p. 20.

[184] James B. Smith, "Assimilation Across the Latino Generations," *American Economic Review*, 93:2 (2003), 315-319.

[185] Tamar Jacoby, "The New Immigrants: A Progress Report," in Tamar Jacoby (ed.), *Reinventing the Melting Pot*, p. 24.

[186] Stephan Thernstrom, "Rediscovering the Melting Pot," in Tamar Jacoby (ed.), *Reinventing the Melting Pot*, p. 59.

[187] Alexandro Portes, "For the Second Generation, One Step at a Time," in Tamar Jacoby (ed.), *Reinventing the Melting Pot: The New Immigrants and What It Means to Be an American*, New York: Basic Books, 2004, p. 160; see also George J. Borjas, "Economic Assimilation: Trouble Ahead," in Tamar Jacoby (ed.) *Reinventing the Melting Pot,* pp. 199-210.

[188] Rubén G. Rumbaut, "The Crucible Within: Ethnic identity, self-esteem, and segmented assimilation among children of immigrants," *International Migration Review*, 28, no. 4 (1994), pp. 748-794.

[189] Pew Hispanic Center. National Survey of Latinos: Summary of Findings. December 2002, p. 9, http://pewhispanic.org/files/reports/15.pdf (accessed June 20, 2010).

[190] There are also national variations within the category "Hispanic" or "Latino." For example regarding the percentage of respondents who use home country primarily or only the following differences may be found: Columbians, 70 percent; Cubans, 65 percent; Dominicans, 61 percent; Puerto Ricans, 58 percent, Salvadorans 56 percent, and Mexicans, 55 percent.

[191] Elizabeth M. Grieco and Edward N. Trevelyan, "Place of Birth of the Foreign-Born Population: 2009," October 2010, http://www.census.gov/prod/2010pubs/acsbr09-15.pdf (accessed November 15, 2010).

[192] Pew Hispanic Center. National Survey of Latinos: Top line Final. December 2002, p. 47, Q#88, http://pewhispanic.org/files/reports/15.3.pdf (accessed June 20, 2010).

[193] *Ibid.,* p. 46, Q#83.

[194] *Ibid.,* p. 44, Q#83.

[195] *Ibid.,* p. 21.

[196] National Survey of Latinos, p. 31, emphasis mine.

[197] Roberto R. Ramirez, "We the People: Hispanics in the United States, December 2004 CENSR-18 Census 2000 Special Reports pp. 1,8, http://www.census.gov/prod/2004pubs/censr-18.pdf (accessed November 27, 2010).
[198] Alexandro Portes, and D. McLeod, "What Should I Call Myself? Hispanic Identity Formulation in the Second Generation," *Ethnic and Racial Studies*, 19, no. 3, 1996, Table 1.
[199] Rubén G. Rumbaut, "The Crucible Within: Ethnic Identity, Self Esteem and Segmented Assimilation Among Children of Immigrants," *International Migration Review*, (1994) 28:4, p. 765, (emphasis mine).
[200] Pew Hispanic Research Center, "Between Two Worlds: How Young Latinos Come of Age in America," December 2009, http://pewhispanic.org/files/reports/117.pdf (accessed June 20, 2010).
[201] "Between Two Worlds," p. 14.
[202] Quoted in N.C. Aizenman, "Ties to parents' homeland hold strong," *The Washington Post*, December 11, 2009.
[203] "Between Two Worlds," p. 22, Figure 3.1.
[204] *Ibid*., p. 8, emphasis mine.
[205] Stanley A. Renshon, *The 50% American: Immigration and National Identity in an Age of Terror*. Washington D.C.: Georgetown University Press, 2005.
[206] Quoted in Sheryl Gay Stolberg, "Democrats Raise Alarms Over Costs of Health Bills," *The New York Times*, November 10, 2009.
[207] Brookings-Duke report, p.16.
[208] MPI report, p. 41.
[209] CFR report, p. 94.
[210] Brookings-Duke report, pp. 2, 6, 13, 15-16.
[211] The news report says, "The commission idea came from Ray Marshall, Labor Secretary under former President Jimmy Carter." See "Democrats Embrace Panel to Regulate Flow of Immigrant Workers," Bloomberg News, May 19, 2010.
[212] Reid-Schumer-Menendez Draft, "Conceptual Proposal for Immigration Reform," pp. 21-22.
[213] Brooking-Duke report, p. 15.
[214] MPI report, p. 41.
[215] MPI report, p. 41.
[216] MPI report, p. 41 (emphasis added).
[217] All the quotes in the preceding paragraph are drawn from Brookings-Duke report, p. 16 (emphasis in last quote added).
[218] Brookings-Duke report, p. 16.
[219] Brookings-Duke report, p. 6.
[220] Brookings-Duke report, p. 16.
[221] Brookings-Duke report, p. 16 (emphasis added).
[222] MPI report, p. xvii.
[223] Brookings-Duke report, p. 16.
[224] CFR report, p. 93 (emphasis added).
[225] CFR report, p. 77.
[226] *Ibid.*
[227] Richard Land, "Immigration Reform and Southern Baptists, April 3, 2009, http://erlc.com/article/statement-by-richard-land-on-truly-comprehensive-immigration-reform/ (accessed June 20, 2010).
[228] U.S. Commission on Immigration Reform, "Legal Immigration: Setting Priorities," 1995, p. 10 (emphasis added).
[229] *Ibid.* (emphasis added).
[230] Randal C. Archibold, "New Immigration Bill Is Introduced in House," *The New York Times,* December 16, 2009.
[231] H.R. 4321, p. 200
[232] MPI report, p. 78 (emphasis added).
[233] MPI report, p. 78.
[234] Department of Homeland Security, Office of Immigration Statistics, *2008 Yearbook of Immigration Statistics*, p. 90, Table 33.
[235] CFR report, p. 78 (emphasis added).
[236] CFR report, p. 77.
[237] Reid-Schumer-Menendez Draft, "Conceptual Proposal for Immigration Reform," p. 23.
[238] MPI report, p. xx.
[239] MPI report, p. 79.
[240] Brookings-Duke report, p. 4.
[241] H.R. 4321, p. 365.
[242] H.R. 4321, pp. 362, 365.
[243] Inter-American Development Bank, "The Changing Pattern of Remittances Survey of Remittances from the United States to Latin America," Washington, D.C. 2008, p. 1, http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=1418521 (accessed June 20, 2010).
[244] Bendixen and Associates, "Survey of Latin American Immigrants in the United States," April 30, 2008, Slide 27, http://www.bendixenandassociates.com/studies2008.html (accessed June 20, 2010).
[245] *Ibid*., Slide 29.
[246] *Ibid*., Slide 42.
[247] *Ibid*., Slide 5.
[248] *Ibid*., Slide 9.
[249] H.R. 4321, Sec. 302, pp. 307-308.
[250] Available at: http://www.taxadmin.org/fta/rate/amnesty1.html (accessed June 20, 2010).
[251] See IRS- Topic 653 - IRS Notices and Bills, Penalties and Interest Charges: "You must file your return and pay your tax by the due date to avoid interest and penalty charge. Generally, interest is charged on any unpaid tax from the due date of the return until the date of payment. The interest rate is determined quarterly and is the federal short-term rate plus 3 percent. Interest is compounded daily. If you file on time but don't pay all amounts due on time, you'll generally have to pay a late payment penalty of one-half of one percent of the tax owed for each month, or part of a month, that the tax remains unpaid from the due date, until the tax is paid in full or the 25 percent maximum penalty is reached," http://www.irs.gov/taxtopics/tc653.html (accessed June 20, 2010).
[252] IRS- Avoiding Penalties and the Tax Gap, March 2008, http://www.irs.gov/newsroom/article/0,,id=181068,00.html (accessed June 20, 2010).
[253] Available at: http://www.irs.gov/newsroom/article/0,,id=204447,00.html (accessed June 20, 2010).
[254] Available at: http://www.irs.gov/individuals/article/0,,id=96406,00.html (accessed June 20, 2010).

[255] See H.R. 736: No Social Security for Illegal Immigrants Act of 2007, http://www.govtrack.us/congress/bill.xpd?bill=h110-736 (accessed June 20, 2010).

[256] See Social Security Administration, "U.S. International Social Security Agreements," http://www.ssa.gov/international/agreements_overview.html (accessed June 20, 2010).

[257] Jonathan Weisman, "U.S. Social Security May Reach To Mexico," *The Washington Post*, December 19, 2002.

[258] GAO, "Proposed Totalization Agreement with Mexico Presents Unique Challenges," September 2003 (emphasis added), http://www.gao.gov/new.items/d03993.pdf (accessed June 20, 2010).

[259] *Ibid.*, p. 2.

[260] During one of Democratic Party's debates, this exchange took place:

> "MR. GIBSON: ...you would favor an increase in the capital gains tax. As a matter of fact, you said on CNBC, and I quote, "I certainly would not go above what existed under Bill Clinton, which was 28 percent." It's now 15 percent. That's almost a doubling if you went to 28 percent. But actually Bill Clinton in 1997 signed legislation that dropped the capital gains tax to 20 percent.
> SENATOR OBAMA: Right.
> MR. GIBSON: And George Bush has taken it down to 15 percent.
> SENATOR OBAMA: Right.
> MR. GIBSON: And in each instance, when the rate dropped, revenues from the tax increased. The government took in more money. And in the 1980s, when the tax was increased to 28 percent, the revenues went down. So why raise it at all, especially given the fact that 100 million people in this country own stock and would be affected?
> SENATOR OBAMA: Well, Charlie, what I've said is that *I would look at raising the capital gains tax for purposes of fairness*."

See Transcript-Democratic Debate in Philadelphia, *The New York Times*, April 16, 2008 (emphasis added), http://www.nytimes.com/2008/04/16/us/politics/16textdebate.html (accessed June 20, 2010).

[261] U.S. Senate Roll Call Votes 109th Congress-2nd Session: On the Motion to Table the Ensign Amdt. No, 3985), http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=109&session=2&vote=00130 (accessed June 20, 2010).

[262] "For those who wish to become citizens, we should require them to pay a penalty and pay taxes, learn English, *go to the back of the line behind those who played by the rules*." The White House, "Remarks by the President at the Esperanza National Hispanic Prayer Breakfast," June 19, 2009, http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-at-the-Esperanza-National-Hispanic-Prayer-Breakfast/ (accessed June 20, 2010).

[263] Exceptions to this rule are written in for persons who were under the age of 16 at the time that they entered the United States and have not reached the age of 35 at the time of the enactment of this legislation. They are exempt from the six year wait if they have a degree from an institution of higher education I the United States, have completed two years of college, have served in the armed forces or has been employed full time, part time or seasonally for two years before the application for status adjustment. See H.R. 4321, pp. 384-85.

[264] MPI. "Side-by-Side Comparison of 2006 and 2007 Senate Legislation and 2009 CIR ASAP Bill," p.12.

[265] The Sanctuary, "Obama's response to sanctuary survey released - still waiting for McCain: updated," September 18, 2008, http://www.promigrant.org/showDiary.do?diaryId=422 (accessed June 20, 2010).

[266] CFR report, p. 96 (emphasis added).

[267] Brookings-Duke report, p. 4.

[268] MPI report, p. xx.

[269] H.R. 4321, p. 380 (emphasis added).

[270] Reid-Schumer-Menendez Draft, "Conceptual Proposal for Immigration Reform," p. 25.

[271] CFR report, p. 82.

[272] CRF report, p. 78 (emphasis added).

[273] H.R. 4321, p. 10.

[274] CRF report, p. 77 (emphasis added).

[275] CFR report, p.45 (emphasis added).

[276] Brookings-Duke report, p. 25.

[277] An excellent analysis of this bill and the subsequent fate of its provisions can be found in Noah M.J. Pickus, *Truth Faith and Allegiance: Immigration and American Civic Nationalism*. Princeton, N.J.: Princeton University, 2005, pp. 123-124. I draw here on that account. See also Susan Gonzalez Baker, *The Cautious Welcome: The Legalization Programs of the Immigration Reform and Control Act*. Santa Monica, Calif./Washington, D.C.: Rand/Urban Institute, 1990, pp. 36, 112, 172-73.

[278] Baker, *The Cautious Welcome*, p. 173.

[279] *Ibid.*

[280] *Ibid.*, p. 131.

[281] Pickus, p. 125.

[282] Baker, *The Cautious Welcome.*

[283] There was a one-year application period, an 18-month temporary residence period, and then a one-year window to adjust legal status.

[284] *Ibid.*, pp. 2,3.

[285] *Ibid.*, p. 81.

[286] *Ibid.*, p. 83.

[287] *Ibid.*, p. 88.

[288] *Ibid.*

[289] *Ibid.*, pp. 86-87.

[290] *Ibid.*, pp. 87-88.

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