

# IMMIGRATION POLICY

Prepared for the

Focusing the Presidential Debates Initiative

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Immigration is woven into the warp and woof of America's self-understanding in a way that is true of few other nations. In our schools and around our dinner tables, the topic invariably leads to allusions to the Statue of Liberty welcoming immigrants to this haven of opportunity and freedom, or to the contributions that immigrants have made and continue to make to our nation's pluralist tapestry, the vibrancy of our cities, the creativity of our arts and popular culture, and the dynamism of our economy. Yet at the same time, immigrants have been regarded – today and in our past – as threats to those same valued features of our national life. Indeed, in the on-going debate, immigrants have been depicted as a drain on our fiscal resources, a production factor of dubious benefit on which sectors of our economy have become unduly dependent, a strain on our neighborhoods and communal institutions, a challenge to our cultural cohesion, and even a threat to our way of life.

So, immigration is a highly complex policy issue, or set of issues, that arouses intense emotions. In the policy arena it also calls upon the technical and analytic skills of lawyers, economists, historians, sociologists, and social policy analysts. To be sure, in the broad national debate over immigration, especially in the media, advocates on all sides of the issue routinely resort to emotionally evocative appeals to conscience, faith, national security, and American exceptionalism. Yet it is striking how quickly these aspects of this issue get stripped away the closer we get to the legislative debate in Washington, where our political and business elites have long and skillfully endeavored to reduce immigration to its more manageable economic and fiscal dimensions. Indeed, if there is any "Washington consensus" to be discerned in this contentious policy domain, this is it.

This phenomenon is not hard to understand. The fiscal and economic impacts of our immigration policy – the demands immigrants place on social programs at various levels of government or the benefits they afford specific business sectors or economic strata – may be technically complex to ascertain, but they are also easier to quantify, analyze, and assess than the more emotion-laden and diffuse impacts of immigration on American social, cultural, communal, and political processes.

Then, too, the overwhelming majority of immigrants (excepting of course refugees, whose particular plight is highlighted by the recent news from Europe) come here either directly or indirectly (that is, to join their families) in search of economic opportunity. Moreover, the technical prowess and professional prestige of economists in policy circles affords their analyses of these processes great visibility. And in any event, business and other economic interests are typically well-defined, highly organized, and for the most part well-represented among our political institutions and elites.

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None of this is news to the millions of Americans frustrated with our immigration policies, especially those populist voices pressing Republican elites to stop kowtowing to entrenched business interests. Less noted is the surprisingly business-friendly posture of liberals engaged in the immigration debate. In part, this is because when liberals support business pleas for increased levels of immigrant labor (as they invariably do), it is in part because they have confidence in the institutions of the administrative state, which have been fashioned, largely by them, to monitor and discipline the market behavior of firms. In any event, it is ironic to see liberals, who are inveterately dubious of business claims when it comes, for example, to tax or environmental policy, accept on their face the demands of those same parties for immigrant workers.

Of course, many – arguably most – Americans do not share the faith of liberal (or for that matter many conservative) elites in the ability of administrative agencies to regulate markets and firms. Indeed, Americans instinctively distrust the lawyers and technocrats who populate these agencies. And so do the populists now surging through the Republican Party. Indeed, the more shrewd and insightful among them might conclude that continued high levels of immigration of the sort that we have been experiencing for the last four decades constitute one more excuse for the build up of the administrative state they have come to distrust, if not abhor outright. This is why any narrow focus on the economic or even fiscal impacts of immigrants on specific segments of society misses the deeper resentment felt by large numbers of Americans toward the failure of our political elites to stem the current influx.

Yet those disaffected with the constrained debate over immigration are concerned about something more fundamental. In part, they are asking why our political elites, on a matter of critical concern to *all* Americans, have been taking business interests at their word? Even those who consider themselves, correctly or not, as materially or concretely disadvantaged by prevailing policy are trying to say, however inarticulately, that America is not just a market but a nation – a political community.

This fundamental concern underlies the outrage frequently expressed over the 11 million illegals in our midst. Without a doubt, the anger expressed toward these “criminals” and “lawbreakers” is in part directed at the elites who have allowed this situation to fester, who have benefitted from it, whether politically or economically, and who now seem perfectly willing to overlook the illegality involved.

Nevertheless, while such populist sentiments are understandable, they are also misdirected and short sighted. Indeed, it is precisely because America *is* a political community that we all share some responsibility for this dilemma. However justified the disaffection and anger directed toward our elites, Americans need to remember that we still live in a free and vibrant democracy. We must also remind ourselves that millions of undocumented immigrants have been able to come here and remain because of flaws in our immigration laws that, in most cases, were understood when enacted – but were nevertheless the best that could be achieved at the time. If 11 million illegal immigrants have broken our laws, then so have a commensurate number of employers and other Americans who have either winked at the law by relying on documents very likely to be false, or simply conspired with the undocumented to evade the law.

Furthermore, it is now the case that, with the passage of time and because America is such an open and absorptive society, these 11 million are substantially integrated into our communities. As a result, “we” (including the millions of undocumented) are all in this together. And we cannot extricate ourselves from it without recognizing the complicity in this nettle of American lawmakers, business interests, and, yes, American voters.

However, none of this relieves the undocumented of responsibility for their predicament. Nor does it ignore or deny the legitimate concerns of many Americans about the challenges and burdens posed by their presence. Accordingly, as I have laid out elsewhere,<sup>2</sup> we should grant as

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<sup>2</sup> Peter Skerry, “Splitting the Difference on Illegal Immigration,” *National Affairs* (Winter 2013).

many of the undocumented as possible permanent legal status, and do so as expeditiously as possible – that is, with appropriate criminal background checks but otherwise with minimal bureaucratic hurdles and penalties. On the other hand, the one penalty that I believe both political and ethical realism call for is that eligible illegals be granted permanent residency -- *but never be eligible for full citizenship* (with exceptions carved out for those undocumented who arrived here as children or minors).

Of course, whatever appeal such a proposal (or some variant of it) might have, it addresses only one aspect of our immigration dilemma. Restrictionist sentiment now demands that any efforts to address the plight of the undocumented must await “securing the border.” In response, immigrant advocates rightly point to the enormous increases in resources and manpower that have been focused on our border with Mexico over the past 25 years. Yet while enormous progress has been made in this regard, border security can hardly be limited, especially in this post-9/11 era, merely to stemming surreptitious border crossings or even to identifying those entering legally through our ports of entry. Since anywhere from forty to fifty percent of undocumented aliens are visa overstayers (including several of the perpetrators of 9/11), we need finally to implement an effective program monitoring the *departure* of visitors. For a variety of reasons – bureaucratic, fiscal, and political – this has proved to be virtually impossible. But effective and meaningful control of our borders requires it.

A related issue already raised by some of the presidential candidates concerns so-called “sanctuary cities,” local jurisdictions that have restricted their involvement with the enforcement of federal immigration laws. The Department of Homeland Security has reported that as of October 2014, there were over 270 such jurisdictions in the United States -- including agencies in Chicago, Miami, New York, Philadelphia, Baltimore, Washington, DC, and San Francisco.

The challenge here surfaced recently in the latter city, where this past summer the Sheriff’s Department released a man with five prior deportations and seven felony convictions, even though federal authorities had requested he be kept in custody until they could pick him up. Instead, the Sheriff released Juan Francisco Lopez-Sanchez, who subsequently fired three shots and for no apparent reason killed thirty-two-year old Kathryn Steinle at a tourist attraction at the Embarcadero. Such incidents only further arouse Americans already confused and offended by the Supreme Court’s 2012 decision in *U.S. v. Arizona*, which asserted the supremacy of federal authority in this policy domain while striking down much of that state’s effort to control its own borders.

At the same time, we must not allow the on-going debate’s narrow and almost exclusive focus on undocumented immigrants to neglect the broader migration phenomenon confronting us. Even if we manage successfully to address the challenges of undocumented immigration with more secure borders and adequate, sustained interior enforcement, most aspects of the continuing influx that have aroused the anxieties of large numbers of Americans – fiscal costs, burdened schools and social services, labor market competition, social disorder and crime, assimilation and cultural change -- will remain. And because immigrant advocates, business interests, and their political allies have routinely addressed concerns about *illegal* immigration with proposals to open the doors wider to *legal* immigration, these strains will almost certainly be exacerbated.

Indeed, the political response to many of our immigration dilemmas has typically been addition: rather than make tough choices among alternatives, we have typically avoiding saying no to anyone and instead afforded various interests some of what they want. The resulting “inflation” fails to address the basic issues, and as a result has meant a steady increase in total levels of legal immigration: more skilled workers, more family members admitted from long waiting lines in places like India or China, more slots for refugees, more agricultural workers, and so on. Such incremental gains have worked for pro-immigrant forces in the past, but now this issue is too heated, and the more aroused segments of the public are not likely to be as pliant as they have been.

Some policy-makers have recognized this problem and sought a path forward with proposals for temporary or guest workers – whether low-skilled agricultural labor or more skilled technical or scientific workers. Yet aside from the almost unavoidable vulnerability of such workers to

exploitation by employers, we know from our own experience, as well as that of other nations, that guest workers tend not to remain “guests” and typically end up staying on in the host country, whether legally or illegally. Acknowledging this reality, some have proposed “temporary worker programs” that, after a few years of employment, offer the option of permanent residence and then citizenship. But then of course we’re back to increasing overall numbers of permanent immigrants and just playing word games.

However difficult it will prove to be, sooner or later Americans will have to engage in a national discussion about how many immigrants should optimally be admitted each year. This will not be easy, in part because there is no technical, social scientific, or even economic answer to this question. This discussion will have to reflect competing economic and fiscal interests, as well as judgments about the capacities of our communities to absorb newcomers. So, too, however clumsily, concerns about assimilation and integration will inevitably enter into such discussions. These will not be easy conversations but something approaching them will be necessary as an alternative to the heretofore elite-dominated policy debate that evaded deeper concerns in favor of a narrow agenda shaped by business and economic interests, sweetened with lots of money poured into border enforcement.

What we need is a discussion about how America’s immigration policy aligns with the national interest. Easy nostrums about our immigrant grandmothers or the meaning of the Statue of Liberty will no longer do. Nor will mean-spirited vilification of migrants seeking better lives for themselves and their children. If we are truly to entertain “comprehensive immigration reform,” such a national conversation will be crucial. It is even conceivable that this might lead to a genuine consensus for increased levels of migration, though that would require much more trust in our business and political elites than substantial segments of the American people now exhibit.