

The Many Facets of Effective Immigration Reform

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Abstract The United States needs a new immigration policy that is based less on wishful thinking and more on realism. Spending vast sums of money trying to enforce arbitrary numerical limits on immigration that bear no relationship to economic reality is a fool's errand. We need flexible limits on immigration that rise and fall with U.S. labor demand, coupled with strict enforcement of tough wage and labor laws that protect all workers, regardless of where they were born. We need to respect the natural human desire for family reunification, while recognizing that even family-based immigrants are unlikely to come here if jobs are not available. And we need to create a pathway to legal status for unauthorized immigrants who are already here so that they can no longer be exploited by unscrupulous employers who hang the threat of deportation over their heads.

Keywords Immigration enforcement · Immigration reform · Unauthorized immigration · Legalization

Introduction

The dysfunction of the current U.S. immigration system is deeply rooted and broadly based. For decades, legal limits on both employment-based and family-based immigration to the United States have been determined largely by domestic political compromises that seldom bear any relationship to the labor needs of the U.S. economy or the social needs of the U.S. populace (Meissner et al. 2006). In defiance of the

economic and technological forces collectively known as “globalization”—which has facilitated the rapid movement of information, people, capital, goods, and services across national borders—the U.S. immigration system is still characterized by a convoluted set of arbitrary numerical quotas that were devised in the 1960s (Ewing 2005). These quotas, and the immigration-enforcement mechanisms which the U.S. government has created in a failed attempt to enforce them, have undermined the U.S. economy, hindered family reunification, made the integration of newcomers into U.S. society far more difficult than need be, and fueled the growth of an unauthorized-immigrant population that now numbers roughly 12 million men, women, and children. Not surprisingly, the revamping of such a monumentally flawed immigration system will be a monumental undertaking (Immigration Policy Center 2009).

Stepping Up, but Falling Short: The Brookings-Duke Report

The report released in October 2009 by the Brookings-Duke Immigration Policy Roundtable, *Breaking the Immigration Stalemate* (Brookings-Duke Immigration Policy Roundtable 2009), acknowledges that the large unauthorized-immigrant population in the United States is only the most visible symptom of the broken U.S. immigration system—and that effective immigration reform will require not only the granting of legal status to most unauthorized immigrants already in the United States, but also the creation of a new mechanism for setting numerical caps on immigration in the future, the restructuring of temporary-worker programs, and a concerted effort to enforce not only immigration laws in the workplace, but wage and labor laws as well. However, the report falls short in two crucial respects by simultaneously rejecting and embracing arbitrary numerical caps on immigration, and by

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giving short shrift to the value of family-based immigration as both an economic resource and a means of facilitating the integration of immigrants into U.S. society.

The Failure of the Enforcement-Only Approach to Unauthorized Immigration

As the Brookings-Duke report notes, the presence of 12 million unauthorized immigrants in the United States is symptomatic of a failure “to devise and implement effective immigration policies (Brookings-Duke Immigration Policy Roundtable 2009, p. 9).” More precisely, the very existence of such a large unauthorized-immigrant population is evidence that the enforcement-only approach to unauthorized immigration, which the federal government has pursued for the past decade and a half, has failed. The number of unauthorized immigrants in the United States has increased dramatically since the early 1990s despite massive increases in the amount of money and manpower devoted to immigration enforcement. Since 1992—the year before the current era of concentrated immigration enforcement along the U.S.-Mexico border—the annual budget of the U.S. Border Patrol has increased by 714 percent; from \$326.2 million in Fiscal Year (FY) 1992 to \$2.7 billion in FY 2009 (Fig. 1).¹ At the same time, the number of Border Patrol agents stationed along the southwest border has grown by 390 percent; from 3,555 in FY 1992 to 17,415 in FY 2009 (Fig. 2).²

Moreover, since the creation of the Department of Homeland Security (DHS) in 2003, the budget of Customs and Border Protection (CBP), the parent agency of the Border Patrol within DHS, has increased by 92 percent; from \$6.0 billion in FY 2003 to \$11.3 billion in FY 2009. The budget of Immigration and Customs Enforcement (ICE), the DHS interior-enforcement counterpart to CBP, has increased by 82 percent; from \$3.3 billion in FY 2003 to \$5.9 billion in FY 2009 (Fig. 3) (U.S. Department of Homeland Security 2005, 2006, 2007, 2008, 2009, 2010). Yet the unauthorized-immigrant population of the United States has roughly *tripled* in size over the past two decades, from an estimated 3.5 million in 1990 to 11.9 million in 2008 (Fig. 4) (Passel and Cohn 2009, p. 1; U.S. Immigration and Naturalization Service 2003). The number of unauthorized immigrants in the country has declined slightly since 2007 in response to the recession which began at the end of that year (Passel and Cohn 2008).

In fact, despite tens of billions of dollars of immigration-enforcement spending since the early 1990s, *nearly all*

unauthorized migrants still eventually succeed in entering the United States. Wayne Cornelius and his colleagues at the University of California, San Diego, have conducted a long-term study of unauthorized migration and found that well over 90 percent of unauthorized immigrants keep trying to cross the border until they make it, and that most of them now rely upon people smugglers to make a successful trip (Cornelius et al. 2008). Cornelius has concluded that “tightened border enforcement since 1993 has not stopped nor even discouraged migrants from entering the United States. Neither the higher probability of being apprehended by the Border Patrol, nor the sharply increased danger of clandestine entry through deserts and mountainous terrain, has discouraged potential migrants from leaving home”—provided that U.S. jobs are available (Cornelius 2006). Cornelius and his team also found that, due to the contraction of the U.S. job market with the onset of recession in December 2007, far fewer Mexicans are coming to the United States (Cornelius et al. 2009).

By channeling unauthorized migrants through extremely hazardous mountain and desert areas, rather than the relatively safe urban corridors used in the past, the concentrated border-enforcement strategy has contributed to a surge in migrant fatalities since 1995. The U.S. Government Accountability Office (GAO) has estimated that the number of border-crossing death doubled in the decade following the beginning of enhanced border-enforcement operations (U.S. Government Accountability Office 2006). A report released in October 2009 by the American Civil Liberties Union (ACLU) of San Diego & Imperial Counties and Mexico’s National Commission of Human Rights estimates that 5,607 migrants died while crossing the border between 1994 and 2008 (Fig. 5) (Jimenez 2009).

Paradoxically, stronger immigration enforcement along the U.S.-Mexico border has encouraged more unauthorized immigrants to stay *in* the United States. Given the high costs and physical risks of unauthorized entry, migrants now have a stronger incentive than in the past to extend their stays in the United States, which increases the likelihood that they will remain. In other words, heightened border enforcement has broken traditional patterns of circular migration and encouraged more unauthorized immigrants to settle here permanently (Massey et al. 2002).

This is not to say that sealing the U.S.-Mexico border against unauthorized entry is impossible. Given enough fencing, razor wire, troops, cameras, motion detectors, surveillance aircraft, and land mines, the federal government could, in theory, create a North American equivalent of the demilitarized zone separating North and South Korea. But such measures are not going to be effective immigration-enforcement tools unless they also are implemented along the 4,000-mile border with Canada and the 5,000 miles of Pacific, Atlantic, and Gulf coastline where unauthorized

¹ Data provided to the author by U.S. Border Patrol Headquarters, Office of Public Affairs, September 25, 2009.

² Ibid.

Fig. 1 U.S. Border Patrol budget, FY 1992–2009



entry might occur by boat, submarine, or airplane. Otherwise, migrants and people smugglers could go around a newly fortified southern border (Ewing 2007). Needless to say, the cost of sealing the perimeter of the United States against unauthorized entry would be astronomical, especially when one considers that the security measures needed to do so would slow legitimate trade and travel to a crawl, thereby inflicting massive damage on the entire U.S. economy.

Legalization as the Most Effective (and Humane) Option for Unauthorized Immigrants Already in the United States

The Brookings-Duke report recognizes that trying to remove all unauthorized immigrants from the United States

“would be a catastrophic choice—enormously expensive, diplomatically disastrous, and hugely costly in human terms (Brookings-Duke Immigration Policy Roundtable 2009, p. 9).” At a time when the budgets of federal, state, and local governments contain more red ink than revenue, in the midst of the worst recession since the Great Depression, it is fair to ask what the U.S. government realistically can afford to do with the 6.3 million men, 4.1 million women, and 1.5 million children who now live in the United States without authorization—plus the 4.0 million U.S.-born, U.S.-citizen children who have an unauthorized-immigrant parent (Passel and Cohn 2009, pp. 4, 7).

There are three possible strategies for dealing with the currently unauthorized population: the “deport them all” approach still advocated by fringe anti-immigrant groups; the “attrition through enforcement” approach now advo-

Fig. 2 U.S. Border Patrol agents stationed along southwest border FY 1992–2009

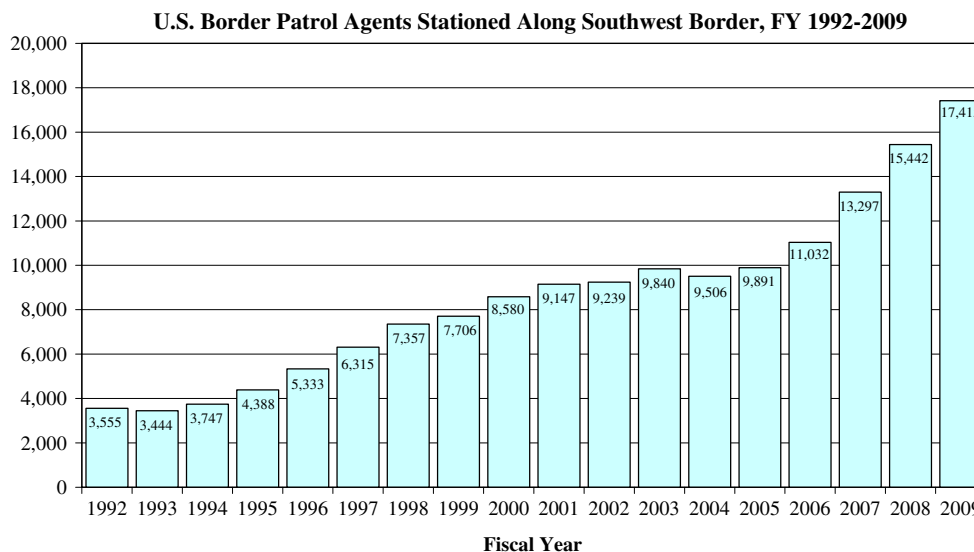
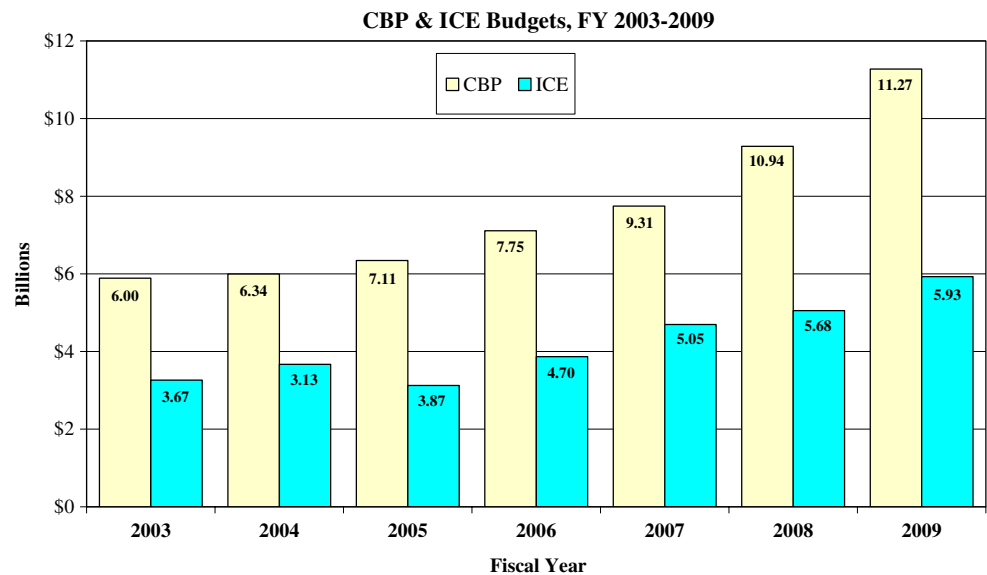


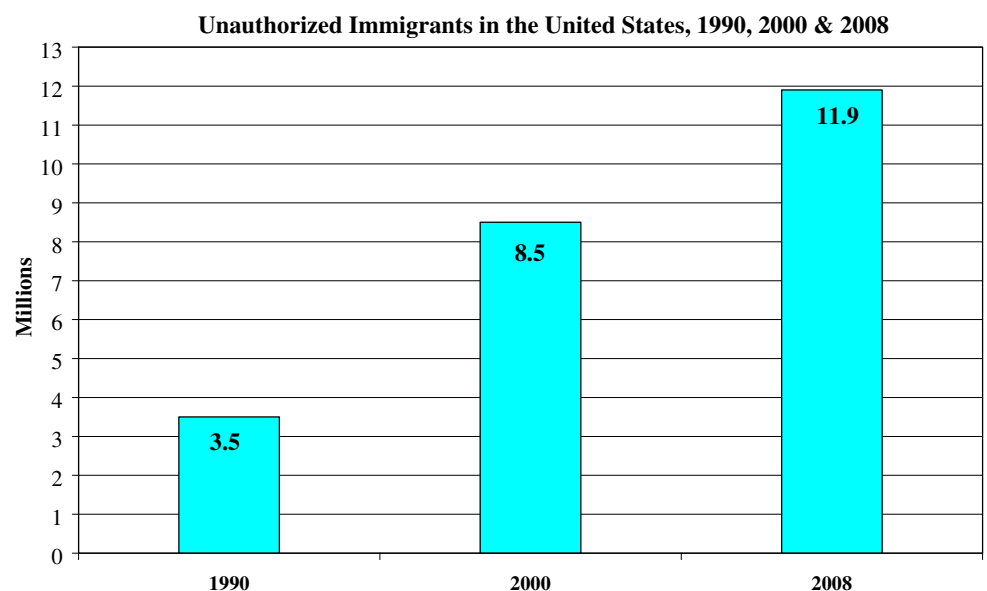
Fig. 3 CBP & ICE budgets, FY 2003–2009

Source: U.S. Department of Homeland Security, *Budget-in-Brief* for Fiscal Years 2005 through 2010.

cated by mainstream anti-immigrant groups; and the creation of a program under which unauthorized immigrants could apply for legal status—an approach advocated by a wide array of groups on pragmatic, economic, and humanitarian grounds (Ewing 2009). In contrast to the first two options, the legalization approach represents an acknowledgment that enforcement measures alone cannot fix a problem that was caused in large part by a decades-long mismatch between legal limits on immigration and the actual labor demands of the U.S. economy. Just as importantly, though, legalization also acknowledges the fact that, since the U.S. economy is now in

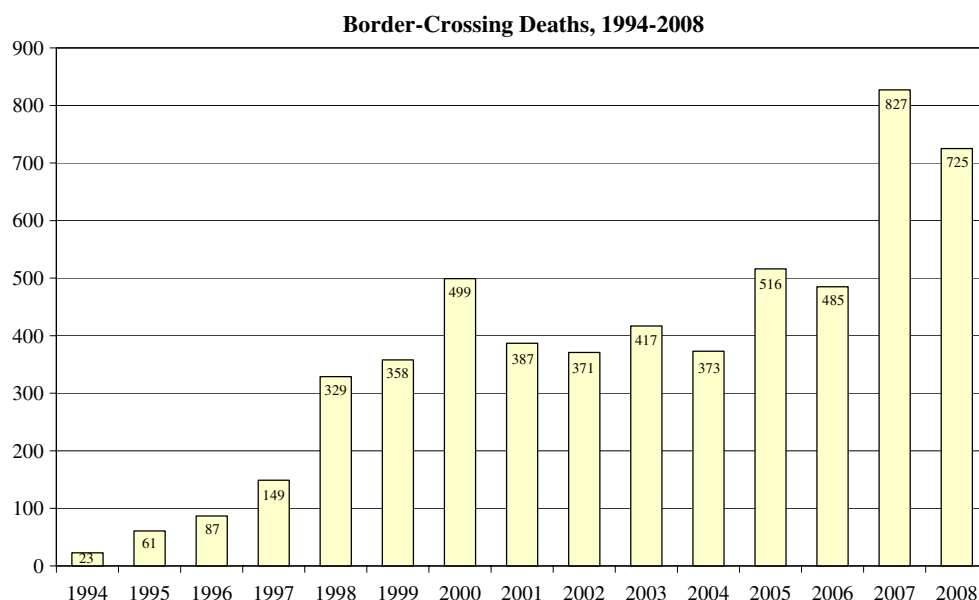
recession, incorporating currently unauthorized immigrants into our strategy for economic recovery makes far more fiscal sense than spending untold billions of dollars, in the middle of multiple budget crises, in a quixotic quest to force them all out of the country.

The “deport them all” scenario is, obviously, the most unrealistic. Leaving aside the daunting logistical, legal, and civil-rights issues involved in raiding homes, schools, and worksites around the country in search of unauthorized immigrants, the cost of a mass-deportation campaign would be immense. Julie L. Myers, head of ICE during the Bush administration, told Senators during her confirmation hear-

Fig. 4 Unauthorized immigrants in the United States, 1990, 2000 & 2008

Source: Estimates by the Pew Hispanic Center; Office of Immigration Statistics (U.S. Department of Homeland Security); U.S. Immigration & Naturalization Service.

Fig. 5 Border-crossing deaths, 1994–2008



Source: Maria Jimenez, *Humanitarian Crisis: Migrant Deaths at the U.S.-Mexico Border*, October 1, 2009, p. 17.

ing in 2007 that it would cost at least \$94 billion (Senate Committee on Homeland Security and Governmental Affairs 2007); a figure which ICE subsequently noted did not include the cost of actually finding unauthorized immigrants, nor the court costs associated with deporting them (Ahlers 2007). The Center for American Progress (CAP) released a more comprehensive estimate in 2005 that put the price of mass deportations at somewhere in the range of \$206 billion to \$230 billion over five years (Goyle and Jaeger 2005).

Neither the ICE nor the CAP estimates attempt to account for the economic impact on U.S. businesses of losing the unauthorized workers who make their products or the unauthorized consumers who buy them. A 2008 study by The Perryman Group estimated that, were all unauthorized workers and consumers removed from the country, the United States would lose \$551.6 billion in annual spending, \$245 billion in annual economic output, and more than 2.8 million jobs (The Perryman Group 2008). Moreover, federal and state treasuries would lose the revenue they now receive from unauthorized taxpayers. Contrary to popular opinion, between half and three-quarters of unauthorized immigrants pay federal and state taxes (White House 2005).

As opposed to the brute force of mass deportations, the goal of “attrition through enforcement” is to make life in the United States so difficult for unauthorized immigrants that they choose to leave, or “self-deport.” This approach involves several types of immigration enforcement, such as worksite immigration raids, denial of driver’s licenses to unauthorized immigrants, and the enlisting of state and local police departments in federal immigration enforcement (Immigration Policy Center 2009, pp. 15–18). But the

centerpiece of the effort would be a costly, mandatory expansion of the federal government’s voluntary and error-ridden “E-Verify” system, through which employers check new hires against the databases of the Social Security Administration (SSA) and Department of Homeland Security in an attempt to ensure that they are authorized to work in the United States. Even though the Brookings-Duke report presents a nationwide E-Verify system as an essential component of the political compromise which might allow a legalization program to pass muster in the U.S. Congress (Brookings-Duke Immigration Policy Roundtable 2009, p. 10), the fact remains that E-Verify is unlikely to persuade many currently unauthorized immigrants to return to their home countries anytime soon.

The Government Accountability Office (GAO) reported to Congress in 2005 that E-Verify cannot detect identity fraud in which an unauthorized worker presents an employer with either valid identity documents belonging to another person, or reasonably well-made counterfeit documents containing valid information about another person (U.S. Government Accountability Office 2005). The Congressional Budget Office (CBO) estimated that the mandatory E-Verify system called for in the SAVE Act of 2007 would have cost at least \$12 billion over 10 years to implement, and probably would have also *decreased* federal revenue by \$17.3 billion over the same period as *more* workers were paid under the table, outside of the tax system (Congressional Budget Office 2008). Moreover, the SSA Inspector General reported to Congress in 2006 that the Social Security records of about 12.7 million native-born U.S. citizens probably contain errors that would “result in incorrect feedback” to employers as to their identity or authorization

to work (Office of the Inspector General, Social Security Administration 2006).

In other words, implementing E-Verify nationwide would cost tens of billions of dollars, would not detect identity fraud, would incorrectly flag millions of U.S. citizens as not being who they say they are, and would result in less tax revenue being collected from unauthorized workers than is now the case. None of these outcomes seems particularly desirable at a time of high unemployment and gaping budget deficits. Nor does this seem to be a promising means of persuading unauthorized immigrants to self-deport.

The third option—creation of a legalization program—would require unauthorized immigrants to pass criminal background checks and pay fines, fees, and any back taxes they might owe. The relative cost-effectiveness of this option is apparent in a CBO analysis of the Comprehensive Immigration Reform Act of 2006—which preceded the onset of the current recession and therefore included increases in legal limits on future immigration as well as a legalization program for unauthorized immigrants already in the country. CBO estimated that the bill would have generated \$66 billion in new revenue over 10 years, primarily from income and payroll taxes paid by both new and newly-legalized immigrants. This revenue would have more than offset the anticipated \$54 billion increase in spending for refundable tax credits, Medicaid, Medicare, Social Security, and food stamps for newly eligible immigrants and their families during the same period (Congressional Budget Office 2006).

The Centrality of Wage Protections and Labor Rights

One important point made in the Brookings-Duke report, which is often over-looked in debates over immigration reform, is the critical importance of wage protections and labor rights in preventing the exploitation of *any* workers. In particular, the report calls for “stepped-up efforts to penalize employers who violate wage and labor laws,” as well as an overhaul of temporary-worker programs to make temporary employment visas “portable” (not tied to a single employer) and “provisional” (allowing the visa-holder to eventually apply for permanent status) (Brookings-Duke Immigration Policy Roundtable 2009, pp. 5, 9). These measures would give immigrant workers added leverage in their dealings with unscrupulous employers who seek to use an immigrant’s unauthorized or temporary status as a pretext for paying substandard wages or providing substandard working conditions. Given the degree to which U.S. wage and labor laws are under-enforced,³ heightened federal diligence in this arena would undoubtedly benefit *all*

workers, regardless of nativity or legal status. Businesses succumb to the temptation to increase profits at the expense of fair wages and working conditions when they know they can get away with it due to lax government oversight.

Conflicted Thinking on Arbitrary Numerical Caps

When it comes to the subject of numerical caps on future immigration, the Brookings-Duke report seems to be of two minds. On the one hand, the report acknowledges that “the framework of family- and employment-based permanent admissions that has been the core of our policy for half a century is rigid and inflexible (Brookings-Duke Immigration Policy Roundtable 2009, p. 15).” But, on the other hand, the report calls for maintaining an over-all cap on immigration of 1.1 million (the current, average, annual number of immigrants granted Legal Permanent Resident status) until such a time as a proposed Independent Standing Commission on Immigration formulates more detailed and evidence-based quotas (Brookings-Duke Immigration Policy Roundtable 2009, pp. 5, 16). Although this figure is understood to be “transitional” in nature (Brookings-Duke Immigration Policy Roundtable 2009, p. 15), it has the effect of unnecessarily constraining the report’s other recommendations on how to alter flows of different types of immigrants.

For instance, the report says that the United States should admit more high-skilled immigrants, and proposes to increase the number of permanent visas for skilled workers by 150,000 per year. But, because of the self-imposed ceiling of 1.1 million on total immigration, this increase comes largely at the expense of family-based immigration, which is reduced by “limiting family-sponsored preference categories to nuclear family members (Brookings-Duke Immigration Policy Roundtable 2009, p. 12).” Yet no empirical justification is given for why this must be a zero-sum game. There is no evidence offered as to how many additional skilled immigrant workers the current U.S. economy actually “needs” or can sustain, and there seems to be an implicit, unsupported assumption that the family-based immigrants being excluded are of no significant economic value.

Giving Short Shrift to Family Immigration

The decision made by the authors of the Brookings-Duke report to “trade” family-based immigrants for high-skilled employment-based immigrants (Brookings-Duke Immigration Policy Roundtable 2009) underestimates the economic value of family-based immigration. Studies have found that family-based immigrants, compared to employment-based immigrants, have higher rates of entrepreneurship (Duleep and Regets 1996a), earnings growth (Duleep and Regets

³ See U.S. Government Accountability Office 2008a, b.

1996b), and upward occupational mobility (Jasso and Rosenzweig 1995). As economist Harriet Duleep puts it, “family-based immigrants meet labor market needs in an ongoing, flexible fashion that contributes to a vibrant economy and, at the same time, fosters permanence with its associated benefits... Those who enter via kinship ties are more likely to be permanent and permanence confers a variety of societal goods (House Committee on the Judiciary, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law 2007).”

Underestimating the Economic Value of Less-Skilled Workers

The Brookings-Duke report also seems to underestimate the economic value of less-skilled immigrant workers. In fact, the only specific policy recommendation the report makes with regard to less-skilled workers from abroad is to oppose any new “guest worker” program (Brookings-Duke Immigration Policy Roundtable 2009, p. 14). However, it should be kept in mind that the rapid growth of the unauthorized-immigrant population during the economic boom of the 1990s came about in large part because legal limits on less-skilled employment-based immigration were woefully out of sync with U.S. labor demand. The U.S. immigration system allots only 5,000 permanent, employment-based visas (“green cards”) each year for workers in less-skilled jobs⁴ and caps the number of temporary workers in less-skilled occupations other than agriculture at 66,000 per year.⁵ So it is hardly surprising that unauthorized immigrants have come to comprise 19 percent of building, groundskeeping, and maintenance workers; 17 percent of construction workers, and 12 percent of food preparation and serving workers (Passel and Cohn 2009, p. 15).

While the economic recession that began at the end of 2007 has dampened the demand for workers of all skill levels, the recession will not last forever. Moreover, the aging of the Baby Boom generation (the 75.8 million Americans born between 1946 and 1964) (Sincavage 2004) poses a long-term demographic challenge that immigration will be increasingly important in meeting. The Bureau of Labor Statistics projects that occupations requiring little or no postsecondary training will account for about half of all job openings between 2006 and 2016, and that a large number of these job openings will arise as older workers retire (Dohm and Shniper 2007). According to demographer Dowell Myers, the

“ratio of seniors (age 65 and older) to working-age adults (25 to 64) will soar by 67 percent between 2010 and 2030,” precipitating “not only fiscal crises in the Social Security and Medicare systems, but workforce losses due to mass retirements that will drive labor-force growth perilously low. Immigrants and their children will help to fill these jobs and support the rising number of seniors economically (Myers 2008, p. 1).”⁶

Conclusion: Breaking Free of the Past

The United States needs a new immigration policy that is based less on wishful thinking and more on realism. Spending vast sums of money trying to enforce arbitrary numerical limits on immigration that bear no relationship to economic reality is a fool’s errand. We need flexible limits on immigration that rise and fall with U.S. labor demand, coupled with strict enforcement of tough wage and labor laws that protect all workers, regardless of where they were born. We need to respect the natural human desire for family reunification, while recognizing that even family-based immigrants are unlikely to come here if jobs are not available. And we need to create a pathway to legal status for unauthorized immigrants who are already here so that they can no longer be exploited by unscrupulous employers who hang the threat of deportation over their heads.

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⁴ The cap is set at 10,000, but 5,000 visas are reserved each year for beneficiaries of the Nicaraguan Adjustment and Central American Relief Act of 1997 (NACARA). See Wasem 2009.

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