

## **Employer Sanctions Can Help Halt the Tide of Illegal Immigration**

### **Background**

In March 2005, the Pew Hispanic Center calculated that there were 7.2 million undocumented workers in the U.S. economy. In its study, the Center estimated that undocumented workers account for 24 percent of all agricultural employment in the U.S., 14 percent of all construction employment, and 12 percent of all food preparation employment.<sup>1</sup> The demand for jobs, and the willingness of American employers to supply them to undocumented immigrants in such large numbers, is the cause of much of the illegal immigration that takes place across America's southern border every day.

The polarization of the debate over illegal immigration is pushing into the shadows the fact that employers are willing to illegally hire migrant labor.

### **The Dynamics of Illegal Immigration**

Much like it is with the flow of illicit drugs into the United States, the demand side appears to be the chief culprit of the present illegal immigration crisis. The willingness of employers to violate immigration and labor laws has negative ramifications for the body politic even if the American economy benefits from illegal immigration. Rather than rewarding lawbreakers through blanket amnesty and encouraging American isolation through wall-building and deportation, workplace enforcement and/or employer sanctions should be a primary focus of state lawmakers. That is an appropriate means to depress demand for illegal immigration.

A report by the Center for Immigration Studies highlights the dynamics of the process that sees so many people enter the United States illegally from Mexico each year:

“The typical Mexican worker earns one-tenth his American counterpart, and numerous American businesses are willing to hire cheap, compliant labor from abroad; such businesses are seldom punished because our country lacks a viable system to verify new hires' work eligibility.”<sup>2</sup>

As to the matter of why Mexicans come to the United States, the World Bank reports that although Mexico's economic situation has greatly improved over the last decade, the real-life situation confronting most Mexicans is horrific:

“According to The World Bank, 48 percent of the Mexican population was living in poverty in 2004, compared to 64 percent following the 1995 crisis.”<sup>3</sup>

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<sup>1</sup>Passel, “The Size and Characteristics of the Unauthorized Migrant Population in the U.S.”

<sup>2</sup>Center for Immigration Studies, “Illegal Immigration,” at [www.cis.org/topics/illegallimmigration.html](http://www.cis.org/topics/illegallimmigration.html).

<sup>3</sup> Barnard R. Thompson, “Politics, the Wonderful Road to Riches in Mexico”, Mexidata.info, September 11, 2006, at <http://www.mexidata.info/id1049.html>;

The crushing weight of Mexico's poor economic health is horribly clear when the situation is considered improved because just 50 percent of its population lives in poverty. The root of American unease with perceived job losses due to illegal immigration begins with the poverty faced by Mexicans who are now part of the U.S. workforce. The costs to that nation, through drain of its human capital, probably cannot be calculated but it is of great benefit to the U.S. economy in general and American corporations specifically.

However, the backlash over the increasing presence of illegal immigrants in the U.S. economy has not led to increased employer sanctions. Instead, it has led to greater calls for more border security—or a closed border—which is ancillary to the central problem of the willingness of corporations to flout federal law. If illegal immigrants did not have access to jobs, either at major U.S. corporations or at day laborer centers (often funded by taxpayers), illegal immigration would not have reached the magnitude it is today. The vast network of migrants now living and working in the United States clearly signals to others that crossing the border in search of a job is an acceptable risk because the likelihood of securing employment is high. Indeed, corporate interest groups have lauded the Senate “compromise” bill on illegal immigration.

Rather than focus on workplace enforcement or employer sanctions, policymakers, particularly on the political right, have instead searched for new ways to secure the border. As noted by the Center for Immigration Studies, “the standard response to illegal immigration has been increased border enforcement. And, in fact, such tightening of the border was long overdue. But there has been almost no attention paid to enforcement at worksites within the United States.”<sup>4</sup> The fact that there is little or no workplace enforcement, and that Mexicans are perceived to violate American immigration laws at will in search of jobs, helps to explain why public opinion runs so strongly on the issue.

### **An Economic Benefit to America?**

An extensive analysis of the impact of illegal immigrant labor by *Business Week* magazine underscores why the U.S. Chamber of Commerce and other business organizations generally oppose efforts to increase border and workplace enforcement. The Chamber puts the blame for the problem of illegal immigration clearly on the shoulders of the federal government.

“Experts estimate there may be as many as 10 million undocumented workers throughout the country who are working hard and performing tasks that most Americans take for granted but won't do themselves, in such industries as construction, landscaping, health care, restaurants and hotels and others. The combination of a need for workers and an inadequate immigration system has caused an unacceptable status quo. By not creating adequate legal avenues for hiring foreign workers and not addressing the status of workers already here,

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<sup>4</sup>Center for Immigration Studies, “Illegal Immigration.”

Congress and this administration are not fully safeguarding the economy for the future.”<sup>5</sup>

The Chamber’s claim that business bears no culpability is hollow. Procedures already exist for hiring of foreign labor (even if those procedures are needlessly bureaucratic), and the “status of workers” is affected most by those who knowingly hire individuals who have not legally entered the United States.

### **Exploring Employer Sanctions**

It is no great leap of logic to deduce that if the employment incentive for illegal immigrants is removed, the rate of illegal immigration will fall. It is a simple supply and demand equation, which can be likened to the problem of illegal drugs in American society. No matter how many poppy fields or drug cartels are destroyed by law enforcement officials, as long as the demand for illegal drugs remains high, so the supply of these drugs will continue. (The problems faced by coalition forces in Afghanistan are a strong rejoinder to skeptics of the demand side of the drug problem.) Similarly, no matter how many illegal immigrants are caught crossing the border, or detained and deported once they get here, as long as the supply of jobs exists, people will continue to attempt (and probably succeed) to enter the U.S. illegally in search of work, especially since economic conditions in Mexico are so deplorable compared to those in the United States.

Among the most effective ways to cut the supply of jobs would be to impose strict sanctions on American businesses that are found to be employing undocumented workers. A provision for sanctioning employers in this way was introduced at the federal level with the Immigration Reform and Control Act of 1986. However, enforcement of this legislation has been generally weak.

The *Washington Post* reported on June 19, 2006, that work-site enforcement operations by the Immigration and Naturalization Service (INS) were scaled back by 95 percent between 1999 and 2003.<sup>6</sup> In 1999, there were 182 prosecutions of employers who had employed illegal immigrants; in 2003, there were just four. Total fines imposed declined from \$3.6 million to just \$212,000 over the same period. The INS was succeeded by U.S. Immigration and Customs Enforcement in 2004, which led to a slight increase in convictions—46 in 2004 and 127 in 2005.

In order to ensure that this increase in convictions continues, the most sensible and needed measure to be introduced in Congress is the Comprehensive Enforcement and Immigration Reform Act (S. 1438, 109th Congress) by Texas’ junior senator, John Cornyn. Among its primary recommendations is to authorize hiring 10,000 additional

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<sup>5</sup> “Essential Workers: Needed Workforce for the Future”, U.S. Chamber of Commerce at <http://www.uschamber.com/issues/index/immigration/essentialwork.htm>

<sup>6</sup> Spencer S. Hsu and Kari Lydersen, “Illegal Hiring Is Rarely Penalized”, *Washington Post*, June 19, 2006; at <http://www.washingtonpost.com/wp-dyn/content/article/2006/06/18/AR2006061800613.html>

agents over five years to investigate employers who hire illegal immigrants. Workplace enforcement is crucial because it places the burden where it most justifiably belongs. Furthermore, workplace enforcement recognizes the sufficiency of federal law in matters relating to immigration and labor: It is already illegal to come to the United States to work without having secured a work visa or having achieved “resident alien” status, and it is already illegal to hire an undocumented worker. New federal laws are not necessary; it is simply the enforcement of existing laws that must be improved.

Despite the recent increase in convictions, and putting to one side the enforcement of employer sanctions by the federal government, there is still a role that individual states must play by drafting legislation and enforcing sanctions themselves. According to the National Conference of State Legislatures, over the past year as many as 30 states have considered a total of 75 bills targeting employers of undocumented workers. States considered almost 500 bills on immigration in 2006 alone. As far as imposing and enforcing stricter employer sanctions is concerned, the onus rests with the states.

### **Recommendations**

In Texas, House Bill 3(79S3) in May 2006 created the gross margins business tax. The business tax excludes “any compensation paid to an undocumented worker” from the amount that an employer may deduct from his tax liability (Texas Tax Code, §171.1012). This is but one small example of an employer sanction. There are many other ways in which the employment of illegal immigrants could be penalized by any state:

#### *Public Subsidies and Tax Penalties*

1. Require that all public agencies, state or local taxing jurisdictions, and economic development corporations give public subsidies to businesses only on the condition that a business will not hire undocumented workers. If a business is convicted of hiring undocumented workers, it should pay back the entirety of its public subsidies, with interest. Public subsidies should include: grants, loans, loan guarantees, fee waivers, land price subsidies, infrastructure development and improvements designed to principally benefit a single business or defined group of businesses, matching funds, tax exemptions, tax refunds, tax rebates, or tax abatements. (See Appendix 3 for model legislation to this effect.)
2. Similarly, business taxes could be amended to include an additional tax penalty equal to 10 percent of tax liability for each undocumented employee a company is found to be employing.
3. State business taxes could be amended so that each taxable entity is required to declare that it employed no “unauthorized aliens” when submitting its reports or returns to the state each tax year. Employer actions contrary to this declaration could constitute perjury.

Monetary Penalties

1. Detail a monetary penalty (perhaps equal to the amount that was paid by the employer to illegal immigrants during the financial year) to be paid to the state by any business found to be employing one or more illegal immigrants. The revenue resulting from such fines could be credited to further enforcement efforts in order to increase their scope and effectiveness.

Business Formation and Affidavits

1. Make the act of paying wages or any other compensation constitute an admission by the employer that he has confirmed that the employee is authorized to work in the U.S. Any employer found to be paying wages or compensation to an unauthorized employee will be considered to have committed perjury.

2. Certificates of formation for all businesses filing with a state should be accompanied by an affidavit stating that the company will not hire “unauthorized aliens.” Employer actions contrary to this affidavit could constitute perjury.

3. To further penalize repeat offenders, any business that is found to have employed “unauthorized aliens” for three out of any five years could be prohibited from conducting business in the state for a period of two years.

If passed, these laws could be enforced by attorneys general, state comptrollers, and/or the state workforce agencies.

Ban the use of public funds for day labor centers.

Day labor centers are areas where illegal aliens are known to congregate to wait for employment. When a city finances the construction or operation of a day labor center, it is providing a benefit to the illegal aliens who use that center to find employment. Similarly, the city is providing a benefit to employers who hire those illegal aliens in violation of federal law. States should prohibit cities from financing the construction, maintenance, or operation of day laborer facilities.

*NOTE: Model legislation follows in Appendix 3.*

**Anticipating and Answering Objections**

1. Businesses and left-leaning groups will come together to oppose state action.

The opposition to employer sanctions in Texas came in the form of a unique alliance. The Mexican American Legislative Caucus of the Texas Legislature, the Texas Association of Business, the Mexican American Legal Defense and Educational Fund, and the American Civil Liberties Union formed a coalition of convenience to oppose any state action against illegal immigration. Businesses, addicted to the drug of cheap labor, joined forces

with left-leaning minority and civil liberties groups to forestall state action on illegal immigration.

Bill Hammond, president of the Texas Association of Business (TAB), argued that the border should not be secured unless “we allow enough legal immigration to meet the need of our employers.”<sup>7</sup> TAB remained a strong opponent of illegal immigration reforms, especially employer sanctions, throughout the 80th Texas Legislature (2007).

As states move forward in addressing illegal immigration, especially employer sanctions, they should anticipate the formation of such alliances.

The true goals of the members of this coalition of convenience are easily distilled. Business groups—largely the agriculture and construction sectors—want cheap labor. Other groups in the coalition make a play for a political constituency.

2. Objection: Enacting employer sanctions is antithetical to free enterprise and free markets.

Response: Despite the odd coalition of business groups and liberal caucuses, the Texas Legislature passed House Bill 1196 by State Representative Lois Kolkhorst (R–Brenham), requiring that all public agencies, state or local taxing jurisdictions, and economic development corporations give public subsidies to businesses only on the condition that a business will not hire undocumented workers. Under the bill, if a business is convicted of hiring undocumented workers, it should pay back the entirety of its public subsidies, with interest.

Representative Kolkhorst’s employer sanction bill was the only bill that meaningfully addressed illegal immigration to pass the 80th Texas Legislature. In passing that bill, conservative leaders made clear that being a proponent of free enterprise and free markets is not at odds with being opposed to illegal immigration. That point was proved by the 135 members of the Texas House who voted for the bill and by a majority of the Texas Senate who did the same.

3. Objection: Illegal immigrants provide an economic benefit.

On the floor of the Texas House of Representatives, State Representative Paul Moreno (D–El Paso) railed against illegal immigration reforms in general. Part of Representative Moreno’s argument is instructive in considering employer sanctions:

“We do not get the credit for the tremendous economic success that this country is having right now. All you have to do is look here in Austin...there’s so much construction going on. Who is performing a lot of the construction? Mexican people—a lot of them undocumented people—they are making and producing a robust economy not only in Austin but throughout the world and we do not get

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<sup>7</sup>Juan Castillo, “Groups: Immigration Fight Belongs in Congress,” *Austin American-Statesman*, February 16, 2007.

credit for that. We do not get credit for the tremendous economical growth that is happening in this country. We are blamed, we the Mexican people, are blamed for everything.”<sup>8</sup>

Response: Economists differ as to the magnitude of the impact of illegal immigrants on the wages of low-skilled workers. George Borjas of the Kennedy School of Government argues that immigration has reduced the earnings of a “typical” high school dropout by \$1,200 annually, or about 5 percent. Others, such as Pia Orrenius of the Federal Reserve Bank of Dallas, believe “immigration had a small negative impact on manual laborers’ wages—about 1 percent—but did not adversely affect the wages of professionals or service workers.”<sup>9</sup> Put another way, depressed wages for low-skilled workers generally benefits employers and the economy as a whole. In response to a *Wall Street Journal* survey:

“Nearly all of the economists—44 of the 46 who answered the question—believe that illegal immigration has been beneficial to the economy. Most believe the benefits to business of being able to fill jobs at wages many American workers won’t accept outweigh the costs.”<sup>10</sup>

Explaining that “farms, hotels restaurants, small manufacturers, and other employers have continued to hire the undocumented with little regard to the federal laws intended to stop them,” the authors of a *Business Week* analysis emphasized why the illegal workforce is so attractive to U.S. businesses.

“The fast-growing undocumented population is coming to be seen as an untapped engine of growth. In the past several years, big U.S. consumer companies—banks, insurers, mortgage lenders, credit-card outfits, phone carriers, and others—have decided that a market of 11 million or so potential customers is simply too big to ignore. It may be against the law for the Valenzuelas [a family profiled in the *Business Week* analysis] to be in the U.S. or for an employer to hire them, but there’s nothing illegal about selling to them.”<sup>11</sup>

In truth, these economic debates matter little. It makes no difference whether there are positive or negative economic consequences of illegal immigration. The point is that the immigration is *illegal*. Just as we do not condone theft or fraud because they can yield an economic benefit to certain parties, illegal immigration should not be condoned simply because some individuals, businesses, or consumers may benefit from it. It is a violation of federal law (8 U.S.C. 1325a) to enter the U.S. without approval by an immigration official, and it is similarly a violation of federal law (8 U.S.C. 1324a) to employ undocumented workers. Businesses and other employers have not only a legal

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<sup>8</sup> State Representative Paul Moreno, Personal Privilege Speech before the Texas House of Representatives on May 8, 2007 (transcribed from video by TCCRI)

<sup>9</sup>Pia Orrenius, “The Impact of Immigration,” *The Wall Street Journal*, April 25, 2006, p. A18.

<sup>10</sup>Tim Annett, “Illegal Immigration and the Economy,” *The Wall Street Journal*, April 13, 2006.

<sup>11</sup>Brian Grow, et Al., “Embracing Illegals,” *BusinessWeek* online, July 16, 2005, at [http://www.businessweek.com/magazine/content/05\\_29/b3943001\\_mz001.htm](http://www.businessweek.com/magazine/content/05_29/b3943001_mz001.htm)

responsibility, but also an ethical one, to ensure that they are not willfully employing illegal immigrants.

The economic benefits of illegal immigration, although debatable, are a distraction from the overriding point that illegal immigrants are here *illegally*.

### **Conclusion**

Millions of people are compelled to leave Mexico because they live in abject poverty. The chronic problems of poverty and unemployment there, as well as the availability of jobs here, are the proximate, if not ultimate, causes of the mass migration from Mexico (even Central America) to the United States. Unless and until employers believe that they cannot escape sanction for their illegal activity, the problem of illegal immigration will remain unabated and the illegal immigration debate will oscillate between the two extremes of deportation and wall-building on the one hand, and blanket amnesty and complete access to social services on the other. Neither extreme is tenable, but neither is any policy on illegal immigration that does not address the root cause of a long-simmering crisis.

Despite the central role of employer sanctions in the Immigration Reform and Control Act of 1986, enforcement of sanctions has been woefully poor at the federal level. For conservatives, the knowledge that we live in a world governed by the incentives of demand and supply leads us to a firm conclusion in the quest to halt illegal immigration. Removing the demand for illegal labor by creating significant disincentives for employers to break the law will cause a decline in the supply of jobs and employment potential for illegal immigrants. With no guarantee of finding a job, the incentive to come to the U.S. illegally will be dramatically reduced, and a decline in illegal immigration is likely to follow.