

CATO HANDBOOK FOR CONGRESS

POLICY RECOMMENDATIONS FOR THE 108TH CONGRESS

CATO
INSTITUTE

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63. Immigration

Congress should

- expand, or at least maintain, current legal immigration quotas;
- focus border-control resources on efforts to keep terrorists out of the country;
- create a temporary worker visa for less-skilled immigrants from Mexico to work in the United States to meet labor shortages and reduce incentives for illegal immigration;
- repeal the arbitrary cap on H1-B visas for highly skilled workers;
- reinstate and make permanent the 245(i) provision to allow foreign-born residents who are legally qualified to live in the United States to remain in the country while they readjust their status; and
- reverse the recent decline in the number of refugees accepted by the United States.

America was founded, shaped, and built in large measure by immigrants seeking freedom and opportunity. Since 1820, 66 million immigrants have entered the United States legally, and each new wave stirred controversy in its day. In the mid-1800s, Irish immigrants were scorned as lazy drunks too beholden to the pope in Rome. At the turn of the century, a wave of “New Immigrants”—Poles, Italians, Austro-Hungarians, and Russian Jews—was believed to be too different to ever assimilate into American life. Today the same fears arise about immigrants from Latin America and Asia, but current critics of immigration are as wrong as their counterparts were in previous eras.

Immigration is not undermining the American experiment; it is an integral part of it. We are a nation of immigrants. Successive waves of immigrants have kept our country demographically young, enriched our culture, and added to our productive capacity as a nation, enhancing our influence in the world.

Immigration gives America an economic edge in the global economy. Immigrants bring innovative ideas and entrepreneurial spirit to the United States, most notably in Silicon Valley and other high-technology centers. They provide business contacts with other markets, enhancing America's ability to trade and invest profitably abroad. They keep our economy flexible, allowing American producers to keep prices down and meet changing consumer demands. An authoritative 1997 study by the National Academy of Sciences concluded that immigration delivers a "significant positive gain" to native Americans of as much as \$10 billion each year.

Contrary to popular myth, immigrants do not push Americans out of jobs. Immigrants tend to fill jobs that Americans cannot or will not fill in sufficient numbers to meet demand, mostly at the high and low ends of the skill spectrum. Immigrants are disproportionately represented in such high-skilled fields as medicine, physics, and computer science but also in lower-skilled sectors such as hotels and restaurants, domestic service, construction, and light manufacturing. Immigrants also raise demand for goods as well as the supply. During the long boom of the 1990s, and especially in the second half of the decade, the national unemployment rate fell below 4 percent and real wages rose up and down the income scale during a time of relatively high immigration.

Immigrants are not a drain on government finances. The NAS study also found that the typical immigrant and his or her offspring will pay a net \$80,000 more in taxes during their lifetimes than they collect in government services. For immigrants with college degrees, the net fiscal return is \$198,000. It is true that low-skilled immigrants and refugees tend to use welfare more than the typical "native" household, but welfare and immigration reform legislation in 1996 made it much more difficult for new immigrants to collect welfare. As a result, immigrant use of welfare has plunged even more steeply than use among the general population.

Immigration actually improves the finances of the two largest federal income-transfer programs, Social Security and Medicare. In a 1998 report, the Social Security Administration concluded, "The cost of the system decreases with increasing rates of immigration because immigration occurs at relatively young ages, thereby increasing the numbers of covered workers earlier than the numbers of beneficiaries."

Despite the claims of opponents of immigration, today's flow is not out of proportion to historical levels. Legal immigration in the last decade averaged about 900,000 people per year, historically high in absolute numbers, but the rate of 4.3 immigrants per year per 1,000 U.S. residents

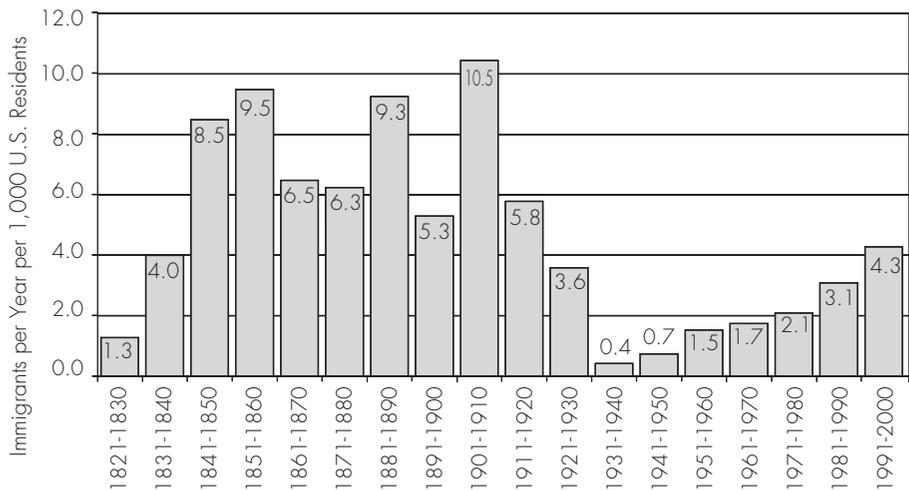
is less than half the rate during the Great Migration at the turn of the last century. (See Figure 63.1.) Today, slightly more than 10 percent of U.S. residents are foreign born, an increase from 4.7 percent in 1970 but still well below the 14.7 percent who were foreign born in 1910.

Immigrants cannot be fairly blamed for causing “overpopulation” or “urban sprawl.” America’s annual population growth of 1 percent is below the average growth rate of the last century. According to the most recent census, 22 percent of U.S. counties lost population between 1990 and 2000. Immigrants have kept major metropolitan areas vibrant and are revitalizing demographically declining areas of the country.

Border Control and the War on Terrorism

In the wake of the terrorist attacks of September 11, 2001, long-time critics of immigration tried to exploit legitimate concerns about security to argue for drastic cuts in immigration. But “border security” and immigration are two separate matters. Immigrants are only a small subset of the total number of foreigners who enter the United States every year. Of the more than 30 million foreigners who entered legally in fiscal year 2000, fewer than 1 million were would-be immigrants. The vast majority

Figure 63.1
American Immigration in Perspective, by Decade, 1820–2000



SOURCES: 2000 *Statistical Yearbook of the Immigration and Naturalization Service*; and 2001 *Statistical Abstract of the United States*.

came as tourists, business travelers, and students or were Mexicans and Canadians who crossed the border for a few days to shop or visit family and then returned home with no intention of settling permanently in the United States.

None of the 19 terrorists who attacked America on September 11, 2001, came as immigrants. They did not apply to the Immigration and Naturalization Service for permanent status. Like most aliens who enter the United States, they were here on temporary tourist and student visas. We could reduce the number of immigrants to zero and still not stop terrorists from slipping into the country on nonimmigrant visas.

The Enhanced Border Security and Visa Entry Reform Act of 2002 represents the right kind of policy response to terrorism. The legislation, signed by President Bush in May 2002, focuses directly on identifying terrorist suspects abroad and keeping them out of the country. Among its provisions, it requires tamper-resistant, machine-readable entry documents and restricts visas from countries that sponsor terrorism. Notably absent from the bill were any provisions rolling back levels of legal immigration or bolstering efforts to curb undocumented migration from Mexico. Most members of the 107th Congress rightly understood that immigrants who come to America to work are not a threat to national security.

America's Legal Immigration System

The United States maintained an essentially unrestricted immigration policy for most of its history. The Chinese Exclusion Act of 1882 and some qualitative restrictions were the only exceptions. But in the 1920s Congress responded to growing xenophobia and fear that new immigrants were racially “inferior” by establishing strict quotas that favored immigrants from northern Europe. In 1965 Congress finally repealed race-based quotas and, in effect, increased the numerical limits. In 1990 Congress raised the numbers and included more visas for people whose immigration is employment based.

Non-Employment-Based Immigration

Current legal immigration is tightly regulated and limited by numerical quotas and per country ceilings that prevent people from a few countries from obtaining all the visas. Legal immigration is limited to refugees, close family members of citizens and legal residents, and individuals with a company to sponsor them. A limited number of “diversity” visas are

also distributed to immigrants from “underrepresented” countries. All categories are numerically restricted, except for the “immediate relatives” of U.S. citizens, whose totals have not shown a long-term, upward trend.

Family Reunification

Under U.S. law, an American citizen can sponsor (1) a spouse or minor child, (2) a parent, (3) a married child or a child 21 or older, or (4) a brother or sister. A lawful permanent resident (green card holder) can sponsor only a spouse or child. No “extended family” immigration categories exist for aunts, uncles, or cousins. In 2000, 78 percent of all family-sponsored immigration visas went to spouses and children. The other 22 percent went to the parents and siblings of U.S. citizens.

Refugees

Congress should reject any rigid “cap” on the admission of refugees. Such a cap is designed to slash the number of refugees admitted and would prevent flexible responses to emerging world situations. The annual number of refugees is set each year by consultations between the president and Congress. The number of refugees admitted has been dropping steadily in recent years, from an average of 121,000 per year under the first President Bush, to 82,000 per year under President Clinton, to fewer than 70,000 under the current President Bush. In fact, the number admitted in FY02 fell well below the 70,000 that the president and Congress had agreed upon in 2001. Although security concerns were cited, refugees are among the most thoroughly screened of visa categories. The U.S. Committee for Refugees estimates that 15 million people have been displaced from their homes by war, persecution, or natural disaster. To promote a more stable and humane world, Congress should keep the door open to refugees from other nations by raising the number of refugees allowed to its more traditional level of 100,000 or more.

Asylum

Unlike refugees, who are accepted for admission while still outside the United States, people seeking political asylum must first enter the country and then request permission to stay. Contrary to the popular impression, gaining political asylum is not automatic. According to the INS, less than half of the claims considered in fiscal year 2000 were approved. INS administrative reforms corrected the system’s key problems (asylum applicants can no longer receive work papers and disappear into the workforce).

The number of first-time claims has dropped dramatically, and almost all new cases are completed within 180 days of filing.

The legislative changes contained in the 1996 immigration law were thus unnecessary and have created a new set of problems. There was no need to require individuals to file for asylum within one year of arriving in the United States, as Congress did in the 1996 immigration bill. Many victims of torture and persecution need time for their emotional wounds to heal and view asylum as an inevitable break with their families and followers back home.

Another problem is the “expedited removal” provision of the 1996 law, which allows low-level INS officials to prevent those arriving without valid documents from receiving a full hearing of their asylum claims. It is not difficult to understand why people fleeing torture or other forms of persecution often cannot obtain valid travel documents from their own governments. The “extraordinary circumstances” exception to the one-year time limit and the summary proceedings established to screen those entering without valid documents do not ensure a high enough standard of procedural protection for people with legitimate claims.

It is a human rights as well as an economic imperative that both the one-year time limit and the expedited removal provisions be changed.

Employment-Based Immigration: The H-1B Debate

Foreign-born workers have filled an important role in the American economy. Nowhere is the contribution of immigrants more apparent than in the high-technology and other knowledge-based sectors. Silicon Valley and other high-tech sectors would cease to function if we were to foolishly close our door to skilled and educated immigrants. These immigrants represent human capital that can make our entire economy more productive. Immigrants have founded companies and developed new products that have created employment opportunities for millions of Americans.

The primary means of hiring highly skilled foreign-born workers is the H-1B visa. Though overly bureaucratic, the system works reasonably well. It allows U.S. companies to hire in a timely manner foreign nationals with the right skills for the job. H-1B visas are generally approved within 60 days. They are valid for six years but must be renewed after three years. The company granted the visa must agree to pay the new employee at least the “prevailing wage” for that area and industry. H-1B visa holders are not immigrants or permanent residents, and they cannot progress toward citizenship.

A visa system for highly skilled foreign-born workers existed for decades without a cap, but in 1990 Congress imposed an arbitrary annual quota of 65,000 H-1B visas. As America's information economy gained steam in the second half of the 1990s, the quota proved to be too restrictive. In 2000 Congress raised the annual cap to 195,000 for three years. Under the law, the quota will revert to the old level of 65,000 in FY04, which could cripple the ability of America's most dynamic companies to remain ahead of global competition.

Despite the charge of critics, H-1B professionals do not depress wages, create unemployment, or cost taxpayers money. H-1B workers are generally among the best-paid workers in U.S. industry. Among the more than half a million H-1B visas issued from 1991 through September 1999, the Department of Labor found only seven cases of willful underpayment by an employer. The sharp downturn in the high-tech and information technology sectors that began in 2000 has cut the number of H-1B visa requests in half, demonstrating that visa requests are driven by demand, not by firms' desire to replace U.S. workers with lower-paid foreign workers.

Congress should act immediately to keep the cap at a high enough level to meet demand or, preferably, repeal the cap altogether to allow U.S. companies to hire the workers they need when they need them to stay competitive in the global economy. At the very least, Congress should permanently raise the cap to a minimum of 200,000 annually, with automatic annual increases of 10 percent thereafter. Department of Labor certifications should not place uneconomic regulatory burdens on U.S. firms that are already under market pressure to offer competitive wages and benefits to their workers.

Legal Immigration Reform: What Congress Should Do

Congress has followed a policy of "immigrants yes, welfare no" by overwhelmingly rejecting cuts in legal immigration while at the same time passing a welfare bill that makes immigrants ineligible for public assistance. Immigrant welfare use, often overstated, is now a dead issue in the immigration policy debate. Since illegal immigration is the main concern, and legal immigration is not a problem, it is not clear why Congress needs to make more than modest reforms to the current legal immigration system.

Congress should continue to keep the issues of legal and illegal immigration separate. For legal immigrants, Congress should at least maintain current family categories and quotas. Ideally, Congress should raise the

current numbers by, among other things, setting aside separate visas for the one-third of spouses and children of lawful permanent residents in the immigration backlog who are physically separated from their sponsors. It should do so without tearing apart the current family immigration system, as the U.S. Commission on Immigration Reform recommended.

Illegal Immigration: What Congress Should Do

To better defend ourselves against terrorism and promote economic growth, America's border-control system requires a reorientation of mission. For the last two decades, U.S. immigration policy has been obsessed with nabbing mostly Mexican-born workers whose only "crime" is their desire to work, save, and build a better life for their families. Those workers pose no threat to national security.

The federal government's 15-year war against Mexican migration has failed by any objective measure. Employer sanctions and border blockades have not stopped the inflow of Mexican workers drawn by persistent demand for their labor. Coercive efforts to keep willing workers out have spawned an underground culture of fraud and smuggling, caused hundreds of unnecessary deaths in the desert, and diverted attention and resources away from real matters of border security. Those efforts have disrupted the traditional circular flow of Mexican migration, perversely increasing the stock of illegal Mexican workers and family members in the United States.

Important sectors of the U.S. economy have turned to low-skilled immigrant workers, documented and undocumented, to fill persistent job vacancies. Hotels and motels, restaurants, construction, light manufacturing, health care, retailing, and other services are major employers of low-skilled immigrant labor. The demand for less-skilled labor will continue to grow in the years ahead. According to the Department of Labor, occupations with the largest growth in absolute numbers will be in those categories that require only "short-term on-the-job training" of one month or less. Those categories include food preparation and service (including fast food); waiters and waitresses; retail salespersons; cashiers; nursing aides, orderlies and attendants; janitors and cleaners; home health aides; manual laborers; freight, stock, and materials movers; landscaping and groundskeeping workers; and manual packers and packagers—all occupations where low-skilled immigrants from Mexico can be expected to help meet the rising demand for workers. Across the U.S. economy, the Labor Department estimates that the total number of jobs requiring only short-term training

will increase from 53.2 million in 2000 to 60.9 million by 2010, a net increase of 7.7 million jobs.

Meanwhile, the supply of American workers suitable for such work continues to fall because of an aging workforce and rising education levels. The median age of American workers continues to increase as the large cohort of Baby Boomers begins to near retirement age. Younger and older workers alike are now more educated as the share of adult native men without a high school diploma has plunged, from 53.6 percent in 1960 to 9.0 percent in 1998. Yet U.S. immigration law provides no legal channels through which low-skilled foreign-born workers can enter the United States to fill the growing gap between demand and supply on the lower rungs of the labor ladder.

Repeal Employer Sanctions

Congress should begin by repealing employer sanctions. Passed in 1986 and widely viewed as a failure, employer sanctions have made it a crime to “knowingly” hire an illegal immigrant. It should be the job of the federal government, not private business owners, to keep out of the country people who are not supposed to be here. The U.S. General Accounting Office found that employer sanctions have created a nationwide pattern of discrimination. The nation’s largest labor organization, the AFL-CIO, has joined major business organizations such as the U.S. Chamber of Commerce in formally opposing employer sanctions as a tool of enforcement.

Congress must oppose any related expansion of INS “pilot projects” to a full-fledged national computerized employment ID system. It should also prohibit any requirement that government-issued documents, such as birth certificates and Social Security cards, become de facto national ID cards, as was the intention of the 1996 immigration bill. If such a law were enacted, one of our most basic rights, the right to earn a living, would be at the mercy of an unreliable government computer system. Computer verification would also compromise the right to privacy and invite abuse by government officials.

Reinstate Section 245(i)

Section 245(i) of U.S. immigration law is a humane provision that allows people who are residing in the United States and who are legally qualified to stay here to pay a fee to remain in the country while they apply for permanent residency. These are people who are typically married

to American citizens or other legal residents, who are working, and who have become productive members of their communities. Although they are in technical violation of U.S. law, they pose no threat to our national security. They can be checked and processed by U.S. authorities more thoroughly here than at our overworked consulates abroad, all without disrupting their work and family life. During the 107th Congress, the House voted by a 2-to-1 margin to extend the provision, but it was blocked procedurally in the Senate.

Legalize and Regularize Mexican Immigration

The best long-term solution to illegal immigration from Mexico is sustained growth south of the border to create sufficient opportunities and security at home for Mexican workers. Meanwhile, the United States and Mexico should take steps toward an immigration system that recognizes the reality and the benefits of Mexican migration to the United States.

One element of a more open border policy could be a temporary visa system under which Mexicans would be allowed to work in the United States for a fixed time before returning to Mexico. Visa holders would be allowed to work in any job in which there was demand for their labor, including those occupations in which illegal immigrants commonly find work today. Such a program would allow Americans to enjoy the many benefits of employing Mexican-born workers in sectors where demand for labor is especially high.

At the same time, an expanded and orderly visa program would drastically reduce the disorderly and dangerous flow of illegal immigrants across sparsely populated areas of America's 2,000-mile border with Mexico. It would enhance our national security by draining a large section of the underground swamp of smuggling and document fraud that facilitates illegal immigration. It would encourage millions of currently undocumented workers to make themselves known to authorities by registering with the government, reducing cover for terrorists who manage to enter the country and overstay their visas.

Legalization would allow the government to devote more of its resources to keeping terrorists out of the country. Before September 11, 2001, the U.S. government had stationed more than four times as many border enforcement agents on the Mexican border as along the Canadian border, even though the Canadian border is more than twice as long and has been the preferred border of entry for Middle Easterners trying to enter the United States illegally. A system that allows Mexican workers to enter

the United States legally would free thousands of government personnel and save an estimated \$3 billion a year—resources that would then be available to fight terrorism.

Suggested Readings

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—*Prepared by Daniel T. Griswold*

