THE RED CARD SOLUTION

A Private Sector Initiative to Secure the Borders and Solve the Illegal Immigration Stalemate

by Helen E. Krieble

Non-Citizen
Work Permit

United States of America
Department of Homeland Security

Must remain in worker's possession. Property of U.S. Government

vKĸ
THE VERNON K.
KRIEBLE FOUNDATION

www.redcardsolution.com

Table of Contents

Overview

Turning a Complex Problem into a Simple Solution

Very few modern political issues have proven more divisive, polarizing, and difficult to solve than the illegal immigration problem. It has divided Republicans and Democrats along stark partisan lines, but the divisions run much deeper. Proposals to reform the nation's immigration system have also divided traditionally aligned factions: labor unions and civil rights groups, business associations and conservatives. Administrations and Congresses have struggled with the issue for years, unwilling to act on any reform for fear of alienating one constituency or another, paralyzed to the point of virtually ignoring one of America's most pressing issues.

No one knows exactly the number of illegal aliens in the US; estimates range wildly between 4 and 20 million. Nor is it known how many of this number are workers or family members, how many actually intend to become permanent immigrants, how many came across the border illegally, or how many came legally but overstayed their visas. In short, the government does not know – and cannot know – very much about this large population. But most Americans view it as a serious problem.

The impact of this enormous labor force on the American economy is staggering. It has touched off an outcry from the public, demanding better control of our borders, and a stop to the use of tax money to subsidize people who break the law. Yet our economy is also increasingly dependent on this same labor force, prompting political leaders throughout the country to struggle for solutions. Despite several major legislative efforts over the past few years, no workable solution has yet emerged, partly because the entire debate is based on a false premise. In a national debate on "illegal immigration," leaders on every side of the issue miss a critically important point – the activities of most illegal aliens in this country have nothing to do with actual immigration.

The solution would seem much simpler if leaders understood that the vast majority of illegal workers in the U.S. are not here seeking citizenship, or even permanent resident status. They are workers with families to support back home, and they have every intention and desire to return home. They are here because they cannot hope to earn as much money working at home. They are here for the money, not because they want to be permanent Americans. Thus, by definition they are not immigrants. They can be referred to as "migrant" workers, "undocumented" residents, the "unauthorized" population, or by other terms. Millions are here illegally. But the debates about "illegal immigration," and solutions proposing a "path to citizenship" fuel deep-seated concerns about amnesty – and even voting rights – for people whose only qualification is a blatant defiance of the law. However, since this is not the objective of most illegal aliens, a program to provide legal non-citizen work permits for these people does not require a significant change in immigration laws. Hiring employees is a private-sector function, and that simple fact is the basis of the Red Card Solution.

The laws regulating immigration, citizenship, and green card (permanent resident) status are also badly written, poorly enforced, and need significant revision. But that is a separate debate, irrelevant to most illegal workers in this country. A legal program – not for citizenship but for simple work permits – would allow the vast majority of these workers to come through the gate, not over the fence, making border control easier, cheaper, and more certain.

Leaders on all sides of the debate know a new legal work program is clearly needed – one that can supply the needed workers, and stabilize the economies of both the U.S. and Mexico. And virtually all agree we

A half million illegal aliens enter the U.S. annually

must eliminate national security concerns by controlling the borders. But much disagreement still exists about whether or not illegals already in the U.S. can be persuaded to go through new steps to get documented.

Illegals already in the U.S., and the employers who hire them (sometimes knowingly, but often not) live in constant fear of raids, apprehension, deportation, or jail. A program enabling them to come out of the shadows and into the American system of freedom and personal responsibility is their strongest desire. Thus, several proposals in recent years have included a plan to make illegals go home, pay a fine, re-apply and re-enter legally. The Bush Administration proposed this approach in 2007 and according to numerous polls, American voters strongly supported that aspect of it. But it soon became clear that it would not work. Simply put, there are two very powerful disincentives that must be eliminated before most illegals would voluntarily "self deport" and re-enter legally.

First, most of these workers do not trust the immigration bureaucracy to handle the caseload efficiently. These workers certainly would have come legally if they could easily have done so – they came illegally precisely because the system could not legally get them to the U.S. in an efficient and timely manner. Expecting them to return to the same government office that could not help them before is unrealistic.

Second, even more important, artificial quotas imposed by Congress upon the number of visas issued means there will never be as many visas as workers who want them – or employers who need them. For instance, Congress limits the number of H-2B visas (for unskilled laborers) to 66,000 per year for the entire U.S., even though there is obviously a market for several million. As long as the number is thus limited, what illegal worker can be expected to return home and re-apply, not knowing whether he might be applicant number 66,001?

As long as those two powerful disincentives remain – the artificial quota and the inefficient bureaucracy – illegals cannot be expected voluntarily to leave the U.S. and re-enter legally.

Adding to the frustration of the current system is a flawed application process. Many Americans think these immigrants ought to simply "get in line" and wait their turn for legal entry. The problem is that *there is no line*. Because work visas are applied for by employers – not employees – prospective workers have no way to know what jobs may be available and there is no process for applying. They must either be recruited by a company large enough to afford sending recruiters abroad, or they must sneak across the border and then hope to find employment. *There is no legal system for a worker in Mexico to apply for a job in the U.S., and no system for employers to find workers if the visa quotas for the year are already filled.* Without any solution to those basics, criminalizing either employers or employees will not solve the problem.

There is a simple solution – the Red Card Solution – a new program with a private sector component that can solve the most difficult part of the problem: making non-citizen worker status quick and easy enough that the workers (including those already illegally in the U.S.) will take the steps to get documented. The active involvement of the illegals themselves will make the program work, and resolve one of our nation's most serious security problems. The alternatives are clearly not working. Unless illegals already in the U.S. believe obtaining legal worker status will be quick and certain, they simply will not apply.

The basis of the Red Card Solution is simple. It separates foreigners seeking citizenship from foreigners seeking work only. And it uses the powerful incentives of the free market system to guarantee the success of the non-citizen worker program. The results will be:

- Easier border control because workers will go through the gates, not sneak through the fence,
- An easy system for businesses to find the qualified workers they need,
- A simple system for workers to find the jobs they need,
- Replacement of the current complex myriad of programs and paperwork,
- A safer and more secure America.

Executive Summary

*Border Control, Legal Workers and Private Employers*

This complex and controversial issue can be resolved only when competing interests come together on a plan to accommodate both sides. That means control of the borders, and it means a new legal non-citizen work program. The unique approach called the Red Card Solution – utilizing the expertise of private employment agencies – would help accomplish both objectives, while offering a practical solution to the current logistic problems faced by workers wanting to come to the U.S., and by those already here illegally. The major components of the Red Card Solution are:

Separate citizenship from work permits

This approach is based on separating the alien population into two different groups, on two different legal paths. One group that wants to become permanent residents or citizens would have to comply with those laws and procedures, including the vitally important process of assimilating into American culture, learning our history, our government, our language, and especially the responsibilities required of citizens. *Citizenship is clearly a responsibility of the federal government.* The second group, non-citizen workers, would follow a different path, a simple way for workers and their families to come to the U.S. for specific jobs and for specified periods of time. It would also require them leave the U.S. at the end of that time, and would provide no special access to the citizenship path. *Matching employers and employees is a function of the private sector, not the government.*

Two Legal Paths

6
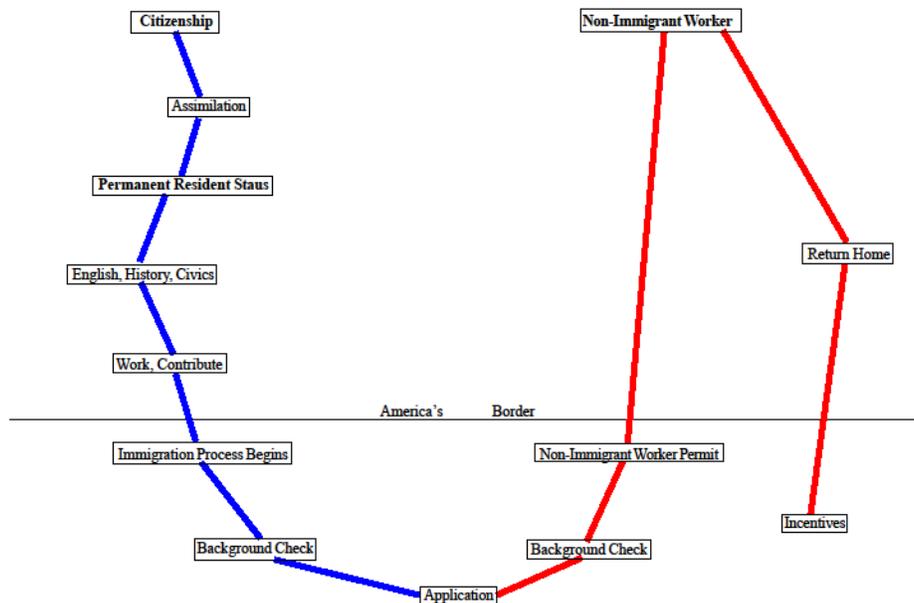
The smart card

A new non-citizen worker program that is job-specific (no job, no card), based on work permits (Red Cards) that specifically describe the location, employer and job for which the card is issued, along with the duration and personal information about the worker, including biometric data. Such information would be encoded on the "smart card" itself in a microchip, similar to cards used to access secure buildings around the world – a technology that makes forgery almost impossible. Such "smart cards" would eliminate the security concerns caused by the current undocumented invisibility.

Controlling the border

As soon as there is a legal system for employers and employees, the borders of the United States must be controlled absolutely, using the best technology and manpower available, to eliminate illegal border crossings. This is central to the workability of any worker program, but would also be enormously cheaper because it would eliminate the need for clandestine and dangerous border crossings by otherwise legitimate

workers. Workers would now enter through the gate, not climb the fence at night. That would allow border agents to focus on criminals – without the need for additional employees or appropriations. Modern technology should be fully utilized, including cameras, drones, heat sensors, ground-penetrating radar, and other current systems.

The private sector role

Private employment agencies would do what they do best – match workers with jobs. Such companies would be allowed and encouraged to open offices in Mexico and other countries, and would be licensed by the U.S. government to run background checks (like those used for firearms sales) with the U.S. and native governments, and then issue the "smart cards". This would all but eliminate the long and expensive waiting periods that are such a disincentive to workers, who would prefer the legal route to better jobs in the U.S. And the background checks would guard against the immigration of criminals into the U.S.

Helping employers and employees

The first advantage of this system is information: workers will finally know what jobs are available, and employers will be able to find qualified workers. Employers would simply post jobs with the private employment agencies specifying location, duration, wages and other required information. The agencies would then find qualified and interested workers, make the match, run the background checks and issue the cards. Employers would have to

demonstrate attempts to hire Americans first, but under this program the economic incentive to do so would be strong – because employment agencies charge fees. After finding the needed workers, employers would have to pay all taxes, and follow all laws that would otherwise relate to hiring local employees. There would be a defined process for renewing the card or changing jobs, for workers with no criminal records.

Separate citizenship rules

The Red Card would in no way be a path to citizenship or to permanent resident status. Procedures for immigrants wanting naturalization or permanent status must be strengthened to ensure that new Americans truly understand the responsibilities of citizenship. Those are different than the responsibilities of people who only seek work, and that difference must be clear. The Red Card Solution is not an amnesty program – people who want to be citizens must follow a different procedure.

Tracking workers

Employers would be able to check the identity and legal status of applicants with a simple swipe of the "smart card," just as they swipe credit cards for payment. The same card could also be swiped and checked by border agents, law enforcement personnel, and others with a need to identify the holder. It would remain illegal to hire any worker not in the country legally.

Smart card readers sell for as little as $20

Enforcement

Once it is easy to hire a legal worker with a Red Card, and easy for foreign workers to get a Red Card, then strong enforcement on several levels would be required for the program to succeed. First, border control is essential to eliminate the availability of illegal "cash" workers. Second, sanctions against employers who hire illegals would be needed to ensure that workers whose cards were cancelled would return home because there would be no work. Such sanctions would be fair if the system for legally obtaining needed workers were in place (today there is no such system, so criminalizing employers before they have any legal option is wrong). Third, workers would be required to stay on the job for which the Red Card was issued, and employers would be required to report any worker who left. A process for workers to change jobs would be needed, of course, but the Red Card could immediately be cancelled for workers who disappear, or who commit crimes, making work impossible. Finally, workers already in the U.S. illegally would be required to leave the country, apply for and legally obtain the Red Card, after which they could return if they had employment. They would have a powerful incentive to do so if the other elements of this plan were implemented – because once legal, they would have the same rights as any worker: minimum wage, health insurance and other benefits, decent working conditions, and the protections of the legal system.

Why Can't Something be Done?

The Current Political Dilemma

National policy-makers in both parties are seriously split on the overall approach to the immigration issue, even though most agree that something needs to be done. Indeed, vast majorities of American voters insist that the current system of unchecked "illegal immigration" is unacceptable. A Tarrance Group survey in 2005 attracted the attention of many politicians with its finding that 83% of the public said a controlled system "that would replace an illegal immigration flow with a legal immigration flow" is needed. Pollsters on both sides of the partisan aisle have been testing the issue every year since, with virtually unchanged results.

Nevertheless, Congress has been unable to act on major reform plans at least twice since then, despite virtually universal agreement on the importance of doing something, and despite a complete change in the majority party controlling both Congress and the White House. The political dilemma for both parties is simple: their major constituencies have competing goals.

The Republican Dilemma
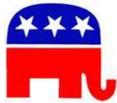
Put simply, the Republican Party represents constituent groups whose immigration views are widely divergent. Law-and-order conservatives are a critical component of the Republican base nationwide and insist that the current illegal system threatens national security and violates the rule of law. They cannot tolerate continued lack of control over America's borders and will not engage in a debate on a new policy unless and until it begins with complete border control. Former Congressman Tom Tancredo, whose political career was largely driven by this issue, wrote, "Millions of newcomers who have played by the rules have earned our support and respect; those who ignore or violate the rules deserve neither."

The Republican Party's political base also includes millions of fiscal conservatives, who express outrage at the use of tax dollars to subsidize illegal activity. They have driven numerous state and local governments to prohibit public funding of services for illegal aliens, and fueled a national debate on issues from drivers' licenses to public education. Granting in-state tuition subsidies for the children of illegals, for instance, has been a "hot button" political issue in at least a dozen states.

Conversely, business leaders – also a crucial part of the Republican Party's national base – are dependent on a workforce that includes huge numbers of migrant workers. These leaders historically oppose major government intervention in the economy, and are generally against further intrusion into labor matters. But more to the point, some industries would be devastated by the mass deportation of their workforce. Industries like agriculture, services, and construction have become dependent upon these workers. A system that provides for the orderly continued availability of such workers has become essential to the debate for these groups. U.S. Chamber of Commerce V.P.

Randel Johnson has spoken and written about the importance of immigrants providing an inexpensive source of labor to fill jobs it is difficult to find Americans to do. The U.S. Chamber strongly supports a plan to bring illegals into legal compliance to reduce the risk of penalties faced by their employers, even though the companies have no reliable way to ascertain a worker's legal status. And most business groups have opposed mandatory verification, at least partly because these government systems have proven unreliable, prone to "false positives," erroneous confusion of legal and illegal workers with similar names.

Each side wields enormous influence in the nation's Capitol, and it is unlikely that a solution can be found without each being satisfied. The polarization of the issue – among conservative leaders – is astounding. For instance, one "conservative statement of principles" published in the Wall Street Journal in 2005 was signed by respected conservative leaders such as Stuart Anderson, Richard Gilder, Newt Gingrich, Ed Goeas, Jack Kemp, Steve Moore, Grover Norquist, and Malcolm Wallop. A response published a few days later was signed by Tom Tancredo, Michael Reagan, Bay Buchanan, Phyllis Schlafly, David Keene, Dana Rohrabacher and Paul Weyrich. The first paper argued the importance of the immigrant workforce to the U.S. economy, and the response argued with equal force the importance of controlling the border. A few months earlier, the Heritage Foundation had published yet another statement of principles by Ed Meese and Matthew Spalding calling for both better enforcement and a simpler path to legal immigration. Even within the Heritage Foundation itself there are divided opinions, and seemingly conflicting views have been published in Heritage "White Papers."

Until these varied interests – usually on the same side of winning issues for the Republican Party – can be brought together, it is not likely that Republicans can back any new reform plan, however strong public support may be. In fact, it is unlikely even Republicans in Congress will be able to join forces on a new plan so long as groups like the U.S. Chamber, Americans for Tax Reform, and Club for Growth have a different perspective than the Heritage Foundation, Eagle Forum, American Conservative Union and so many other icons of conservative thought in America. Bloomberg News predicted the outcome of Republican efforts in 2005, under the headline "Bush's Immigration Plan Divides Republicans, Deadlocks Congress." During the eight years of the Bush Administration, during which Republicans also controlled both Houses of Congress, they were never able to bring these conflicting interests together to address the issue.

Among Republicans, a solution must be found that gives each side what it needs. One side insists on absolute control of the borders as a prerequisite to the debate, and another needs a system to guarantee availability of the workforce at a reasonable cost. It is possible to do both. They are not mutually exclusive, but no proposal has yet emerged that meets the needs of each side.

The Democratic Dilemma

With the election of President Barack Obama and the overwhelming Democratic control of both Houses of

Congress, many observers expected the immigration issue to be atop the agenda for the new leaders. They were to be disappointed.

Like the Republicans, the Democratic Party also represents constituent groups whose immigration views are widely divergent. Civil rights groups and minority advocates across the country strongly support an immediate and simple process for illegals in the U.S. to come out of the shadows, register and become legal documented workers as soon as possible. They support an easy path to citizenship not only for the illegals already in the U.S., but for new workers who come in the future, too. They make a strong case about the unintended abuse of illegal workers caused by a system that forces them to live in hiding, work for cash, settle for lower wages, and live in constant fear of both the criminal elements and law enforcement. Some of these groups support relatively open borders, and others would simply raise the numeric quotas for visas and for green cards (permanent resident cards). Their primary objective is full citizenship rights for all people in the United States, regardless of how they came here.

Catherine Singley of the National Council of La Raza explains that "Empowering undocumented workers through legalization would enable all workers to compete on a level playing field while ensuring that the workforce responds to important demands in the economy." Other groups with similar objectives, including the League of United Latin American Citizens (LULAC), American Civil Liberties Union (ACLU), and the League of Women Voters, are an important part of

the Party's historic political base. They push for equal treatment under the law of all immigrants – regardless of their legal status – from driver's licenses to subsidized tuition.

On the other hand, Democratic constituencies also include powerful labor unions, many of which have a decidedly different perspective – especially on temporary "guest worker" programs. In short, unions generally oppose guest worker programs, arguing that such workers artificially depress the wages of their native-born American counterparts. An AFL-CIO publication on the subject puts it bluntly: "Guest worker programs are bad public policy and operate to the detriment of workers, in the both the public and private sector, and of working families in the U.S." Thus, while civil rights groups argue for an easy path to citizenship for illegal workers, and open borders for the future flow of labor, unions are simultaneously arguing against any more guest workers of any kind.

As a result of these competing interests, the Democratic Party remains as divided as the Republicans were. Despite over a year in power, with filibuster-proof majorities in both Houses of Congress, Democrats are no closer to any action on immigration reform.

Once again, with another election looming, Congress is under political to address the issue, and once again seems determined to seek a "comprehensive" solution. But just as the health care reform debate became mired in controversy because of the bill's size and scope, immigration bills that attempt to fix all aspects of the problem offer

something for everyone to hate – and generally die of their own weight.

Can All Sides Win?

The Red Card Solution can resolve this dilemma for both Parties and all the interest groups. Most aspects of a solution that works for everyone seem simple enough – border control, a practical legal guest worker program, protections for American workers, a workable verification system for employers, and a path to some type of legal status for those

Long lines and years of delay are common for workers who try to get legal U.S. work visas

already illegally in the U.S. That last piece remains the most difficult – how can we ensure that illegal workers already in the U.S. will go through the process to get documented? They cannot be expected to "report to deport" and they won't leave the U.S. first unless they are certain they can return. That dilemma points to an important part of the problem that is rarely discussed in policy circles, but very real to the workers. The bureaucratic pace and enormous backlogs that plague government agencies have grown steadily worse over the years. For many workers wanting jobs in the United States, the wait is simply too long, the process too cumbersome, and the cost too high. So the inability of government to respond quickly to such needs simply adds another (fairly powerful) incentive for people to come illegally, rather than wait for the legal process. It is not uncommon for workers to wait nearly a decade for a visa.

Government employees, of course, get paid the same whether they issue visas in a timely manner or not, so they will never have the same incentive to make the program work that private companies would have. Private companies have the oldest incentive there is – money. In business, if you don't get the job done the way the customer expects, you don't get paid. On the other hand, if you do the job better than others, you might get rich. Whether you consider the activity of an employer, an employee, or a middle-man such as a private employment agency, people can always be expected to do what is in their own best interest. That is why the profit motive is the strongest of all. And that is why the private sector component in this plan is the key to a final solution.

IMMIGRATING LEGALLY? GOOD LUCK!
OUR NATION'S BROKEN IMMIGRATION AND NATURALIZATION SYSTEM

JAYA DUTT

UNSKILLED IMMIGRANT

SORRY!
Unlike previous periods in our history, there is virtually no process for unskilled immigrants without family relations in the US to apply for permanent legal residence. Only 10,000 green cards are alloted every year and the wait time approaches infinity. (Those who receive H-2A or H-2B temporary visas for seasonal work cannot transition to a green card.)

CITIZEN

Is relative a US Citizen or Lawful Permanent Resident (LPR)? — **YES** → Family in USA? — **NO** → Is applicant skilled? — **NO** →

Is applicant a spouse, parent or minor child? — **NO**
YES

CONGRATULATIONS!
You've found one of the best ways to legally immigrate into the US. Spouses, minor children and parents of US Citizens have no annual cap on entry and can generally receive a green card.

After 5 years, green card holder is eligible to become a US Citizen (3 years if a spouse).

After you file your naturalization papers and endure 6-12 months of processing delays, you can take a language and civics test, pass and become a US citizen.

Adult children and siblings of US citizens can apply for a green card.

Wait time depends on home country and marital status.

Single Adult Children: 6-14 year wait.

Married Adult Children: 7-15 year wait.

Siblings of US Citizens: 11-22 year wait.

With green card, can likely become citizen after another 6 years.

LAWFUL PERMANENT RESIDENT

Is applicant spouse or child of LPR? — **NO** → Sorry, You're out of luck.
YES

Is child a minor? — **NO** → Is the adult child single? — **NO** → Sorry, You don't qualify to apply.
YES

Spouses and minor children of LPRs can apply.

Wait time depends on home country.

Wait time: 5-7 years.

With green card, can likely become citizen after 6 years.

YES
Wait time depends on home country.

Wait time for single adult children of LPR: 9-14 years.

SKILLED IMMIGRANT

Do you have a college degree in a speciality occupation?
YES

OK. Then you have a shot, if...

...you have a job offer.

Is your employer willing to file the paperwork with the DOL for a labor certification? And conduct a new job search for your position? And pay up to $10,000 in legal and other fees? — **NO** → Sorry, You're out of luck.
YES

Wait time for a green card (particularly from India and China) is 6-10 years.

After your green card, count on another 5-6 years for citizenship.

Sorry, You're out of luck.

Sorry, You're out of luck.

Can you prove that you are a genius? How about a star athlete? Or an investor with $1 million?
YES

...is he willing to apply for your temporary work visa (H-1B)?

But, if an employer can't wait 6 to 10 years for you to start work...
YES

Then you have a 50/50 chance of getting your H-1B because these visas are capped at 85,000 per year, well below the total demand. They run out on the first day they become available. If you are lucky enough to get it, then you can start working in the country and your employer can apply for your labor certification and green card.

CONGRATULATIONS!
You have found the quickest way to get a green card - about 12-18 months. But you would have made it anywhere, Mr. Beckham.

With your green card you can become a citizen in 5-6 years.

Total time to immigrate and become citizen:

| | BEST CASE: 6-7 YEARS | TOTAL: 12-28 YEARS | TOTAL: 11-13 YEARS | TOTAL: 14-20 YEARS | TOTAL: 11-16 YEARS | TOTAL: 6-7 YEARS |

Developed by Reason Foundation in collaboration with the National Foundation for American Policy

Reason
www.reason.org

Reason Foundation flow chart showing the complexity of the legal immigration system

13

Political Wisdom v. Economic Reality

Why the Issue is So Important

The ground-breaking 2005 Tarrance Group survey showed very broad public support for a new immigration plan that included both border control and a legal worker program. Specifically, that survey found that more than 75% of likely voters support a plan to register undocumented workers, provide work permits for seasonal and temporary workers, penalize employers and employees who break the law, and get control of the borders.

Among the most interesting and unusual findings in the survey was the nearly universal support across a wide array of demographics. Such a plan is strongly supported by Republicans, Democrats and Independents, by men and women, by white, black and Hispanic voters, by urban and rural voters, and by union and non-union households. More subtly hidden between the lines in the survey, however, are the same contradictory feelings that plague the primary interest groups working the issue in Washington, D.C.

By a supermajority of 84%, people surveyed think penalties for those who violate our immigration laws should be tougher. More than 80% think undocumented workers ought to be forced to register, and 86% want a legal system to replace the current illegal system. Yet despite their strong support for border control, a vast majority thinks deporting all the illegals already in the U.S. is unrealistic, and more than 80% think immigrants who have been working, paying taxes and learning English should be rewarded. However,

though people believe in rewarding legal behavior, strong majorities also oppose use of a temporary work permit as any sort of credit toward citizenship.

The Politics

The simple reality is that most Americans understand the wisdom – and the necessity – of controlling our borders. But most Americans also understand that immigration is a part of our history and culture, and very few share a general opposition to any immigration. The elections of 2006 and 2008 offer further evidence that the public does not react well to anti-immigrant messages.

Numerous organizations use polling to support their points of view, but rarely do such surveys reveal workable solutions. As recently as February, 2010, the Center for Immigration Studies (CIS) commissioned a Zogby poll showing huge majorities of business leaders, small businessmen and union members prefer enforcement to make illegals "go home" over "a "pathway to citizenship with conditions." But the poll offered no middle ground choice, no legal path other than citizenship, no enforcement other than "go home." Naturally the results mirror the views of CIS. Political leaders frequently fall into the trap of such polls, often at their peril.

The Vernon K. Krieble Foundation, as part of its education and research efforts on this issue, commissioned Public Opinion Strategies (POS) to analyze messages from candidates of both parties

through the 2006 election, and the results showed a tremendous gulf between public understanding and the tone of many campaigns. Data collected in a national post-election survey and voter tests (focus groups) of specific campaign ads, showed that voters were not persuaded by the prevailing view of many candidates that locking the borders and deporting workers would solve the problem. On the contrary, large majorities of voters nationwide continued to say the solution requires both border security and a temporary worker program. And they were not pleased with mostly-Republican campaign ads promising a strict border crackdown, or attacking their Democratic opponents for being "soft" on the issue.

In fact, a growing majority of voters (64%-36%) now say a more efficient system for handling guest workers would do *more to control the border* than increased law enforcement. That showed a significant increase since polling a year earlier (51%-41%), despite months of campaign publicity and intense media coverage of the issue.

The data showed that:
- Three-quarters of Americans said their candidates' position on illegal immigration is very important or extremely important (76%-24%).
- Most voters (79%-21%) think illegal immigration is having an impact on their own communities.
- Most voters (69%-29%) saw, read, or heard their candidates talking about the issue.
- More than 60% even saw paid advertising on the issue from their candidates.

- A significant majority (64%-35%) said what they heard from Republican candidates on the issue either made no difference, or made them *less likely* to vote for those candidates.

In other words, most voters are saying this issue is enormously important to them, but they do not agree with the extreme positions taken by so many candidates. They want the issue addressed, but in a meaningful way that will control the border AND solve the labor issue. In fact, several congressional candidates who talked tough on border security were defeated that year, including incumbents like John Hostettler (R-IN) and J.D. Hayworth (R-AZ). Others who took a more balanced approach to solving the problem, such as Rep. Mike Pence (R-IN) and Senator Kay Bailey Hutchison (R-TX), were re-elected handily. In the 2008 election, Senator John McCain's record of support for immigration reform prevented the issue from being used against him by Barack Obama. And although some conservatives were angry about McCain's involvement in the issue (sponsoring the McCain-Kennedy bill), he nonetheless won the Republican nomination, while anti-immigration candidate Tom Tancredo won scarcely 1% of the vote in the primaries he entered.

The POS focus group tests of specific 2006 campaign TV ads underscored that conclusion. The range of ads tested in that survey included tough border crack-down ads, negative ads critical of candidates with "soft" records on the issue, and more balanced ads calling for border control and help for legal immigrants and workers. The latter

scored far better among voters, not only in an "effectiveness" category but also in a category called "represents my point of view."

Earlier that year, another survey (also by POS) had discovered that the problem is more complex than many pollsters had previously suspected. Large majorities were often registered for seemingly contradictory views. For instance, 75% of respondents told the Tarrance surveyors they support tougher penalties – including deportation for those who violate our borders, yet 86% also said they support an easier legal system. But until a March, 2006 POS survey commissioned by the Vernon K. Krieble Foundation, pollsters had not tried to understand the link between those two viewpoints. The result was fairly clear. A huge majority of Americans actually think border control is *not possible* without a better system for managing the labor problem. The question was also asked several different times over the next election cycle, always with the same results.

Overwhelmingly, voters agree a more efficient guest worker system is essential to border control.

Absolute Border Control Not Possible Without Better System for Handling Guest Workers

+62%

78%	
	16%
Agree	**Disagree**
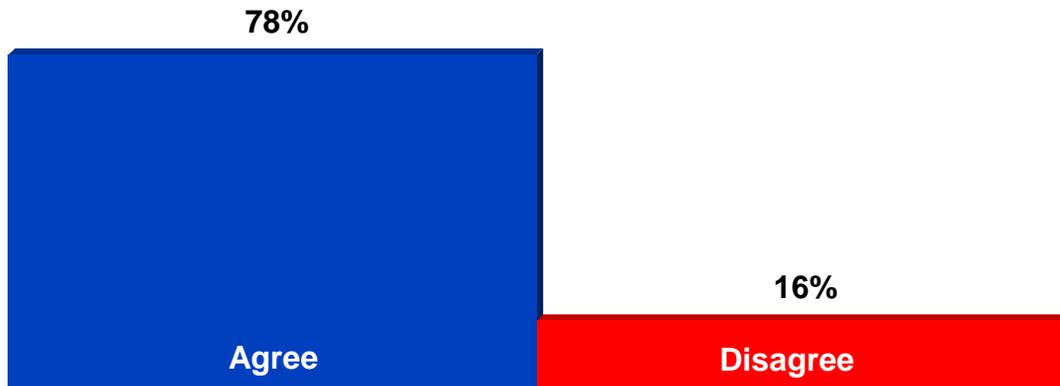
Now, please tell me if you agree or disagree with the following statement...   It is not possible to have absolute border control without a better system for handling guest workers.

POS National Survey, March, 2006

16

The Economics

One reason the politics of illegal immigration seem so complex is that the impact on the U.S. economy is equally complex. The U.S. Chamber of Commerce argues persuasively the need for an affordable workforce, and the importance of certainty to employers. Clearly there are jobs that would go unfilled if not for migrant workers, making their presence important to the continued strength of the American economy. This has been the case for decades in the agriculture industry, but in modern times it seems that hotels, restaurants and others in the service industries and construction companies have increasing difficulty filling jobs with local citizens.
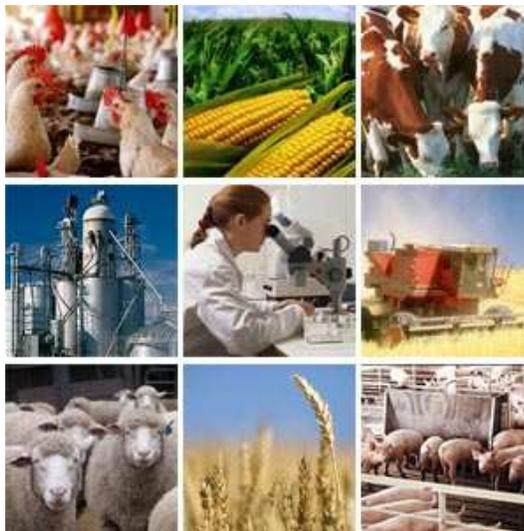
The Economic impact of agribusiness is almost double all manufacturing enterprises (measured in total assets); it represents 40% of all consumer spending, and employs 37% of the American labor force.

An especially difficult situation confronts restaurant owners across the country. The restaurant industry employs almost 13 million people, and will grow another 10% (another 1.3 million workers) by 2020. The problem is that a large majority of this workforce is between the ages of 18 and 24, a population group that is not growing to keep pace with this growing demand. As Rev. Louis Cortes of Esperanza USA has said, *"If you don't have a person to help you clean dishes in a restaurant, you're going to go out of business. The question is: do we have enough dishwashers in American society. And, the answer is no. We really don't have them."* The American economy simply does not produce enough dishwashers for the growing demand. That is why the industry has become so reliant on foreign workers.

This and other segments of the American economy are not small – they generate hundreds of billions in the national economy annually. Senator George Voinovich points to the $73 billion annual impact of agribusiness in his home state of Ohio alone. Immigrants have become an important aspect of the American economy, like it or not, and reforms that guarantee an available workforce must be found. Voinovich sites studies showing that each farm worker in the fruit, vegetable and nursery industries supports 3 ½ jobs for Americans in the surrounding economy: processing, packing, transportation, equipment, supplies, banking, and insurance. A similar "multiplier effect" is generally seen in most other industries, as well.

On the other hand, illegal aliens are also a drain on the economy. It is undeniable that illegals have a dramatic impact on schools, social services, roads, jails, and health care facilities. There are numerous studies analyzing these impacts, some concluding that illegals

are a net drain on the economy, others arguing the reverse. A now-famous 2001 Time Magazine article reported, "It costs border counties $108 million a year in law enforcement and medical expenses associated with illegal crossings." The article also discussed a shortage of judges to hear cases related to illegals, and said some ambulance companies face bankruptcy "because of all the unreimbursed costs of rescuing illegals from the desert." The problem has only grown worse since then, while Congress has remained deadlocked.

It is a mistake to underestimate the illegal population, or its impact, positive and negative. Conservative estimates place the number at more than 9 million (Urban Institute Immigration Studies Program), more than a fourth of the entire foreign-born population. Mexican immigrants make up nearly 60% of that total and 23% are from other Latin-American countries. Although 65% of illegals live in six states, the most rapid growth in this population since the mid 1990's has been outside those states. The Urban Institute, based on Census data, estimates that more than 5% of all U.S. workers are illegal. Further, nearly half the entire foreign-born population in 11 western and southern states is illegal and over 30% in another 12 states.

The cost of illegal aliens to taxpayers is also staggering. In Arizona, the Federation for American Immigration Reform (FAIR) has estimated public expenditures for illegals to be $1.03 billion per year, primarily in education, health care, and corrections. In Texas, it is estimated at $3.73 billion per year and in California a staggering $8.8 billion per year. The full cost to governments across the nation can only be estimated, but there are some excellent attempts.

Dr. Donald Huddle, a Rice University economics professor, published an analysis in 1996, including an estimate of tax payments by the same aliens. Then, the illegal alien population was estimated at about 5 million, and the estimated cost of those illegals to the federal, state and local governments was $33 billion. This impact was partially offset by an estimated $12.6 billion in taxes paid, so the net cost to taxpayers was about $20 billion every year. This does not include indirect costs such as unemployment payments to Americans who lost their jobs to illegal aliens, or lost tax collections from those unemployed American workers, which were estimated at an additional $4.3 billion annually.

If as commonly estimated the illegal alien population has doubled since then, the estimated fiscal costs also have at least doubled, not even allowing for inflation. That means, by Dr. Huddle's methods, a 1996 cost to the American taxpayer of $33 billion would today be at least $70 billion, and the net expense to taxpayers from illegal aliens today would be at least $45 billion. The indirect costs could now be another $10 billion annually.

It is often estimated that only about half of illegal workers pay withholding taxes, but if all of them did, these economic impacts could be mostly offset. Most Americans express fewer objections to the presence of *taxpaying* foreign workers. Otherwise, the inescapable reality is that the impact of illegals on the U.S. economy is complex in value, but staggering in proportion.

Why Not Citizenship?

A Path to Legality v. a Path to Citizenship

One reason the political debate on illegal immigration is so difficult is that some groups continue to insist that any solution must include a path to *citizenship* for the millions of people who are now in the U.S. illegally. That view assumes that permanent residency and citizenship is the only way for illegals to come out of the shadows and realize the full benefits of their jobs and lives in America. It is a false premise for two reasons.

First, it assumes most illegals actually want to be U.S. citizens. In fact, the vast majority only come to the U.S. for work, and to capitalize a better life for themselves and their families back home. Most of them have every intention of returning home after making enough money to do so.

Second, it assumes that citizenship is the only way to get people "legal." That is, of course, completely wrong. Any number of existing visa programs offer foreigners the legal right to be in the United States without being American citizens: student visas, tourist visas, and many categories of work visas. Of course, the groups pushing for citizenship are really more interested in turning these people into voters – a separate issue that should not be allowed to complicate the debate on illegal immigration. Citizenship is too serious for that.

What Citizenship Means

The locations differ, but the emotions do not. Standing on the deck of the USS

Constitution on Independence Day, a teary-eyed immigrant, wearing a crisp new suit and tie for his naturalization ceremony, was overcome with emotion. He had trouble describing to a reporter his feelings on becoming a citizen of the United States of America. Finally he said simply, "I belong to the free world now." For him, like almost a million new American citizens annually, the "free world" may be intangible, but "I belong" is personal.

All new U.S. citizens take this oath:

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will bear arms on behalf of the United States when required by the law; that I will perform noncombatant service in the Armed Forces of the United States when required by the law; that I will perform work of national importance under civilian direction when required

by the law; and that I take this obligation freely without any mental reservation or purpose of evasion; so help me God.

It is said that anyone, anywhere, can become an American, and that everyone who believes in freedom and democracy is already an American at heart. That's true because America is more an idea than a place – the idea that people can govern themselves. Still, legally becoming an American citizen is a significant accomplishment, the end of a complex process. An immigrant must live in the U.S. for five years, speak English, learn about our history and government, be of good character and most important, renounce all other allegiances and promise loyalty to the United States and its Constitution – including a promise to defend the country if called upon. Citizenship is a very serious responsibility that comes with two prerequisites: it must be offered by a society under predetermined rules, and it must be voluntarily accepted along with the obligations it entails.

In today's debate on immigration reform, many politicians forget that; they argue illegal aliens need a "path to citizenship" as part of any legislation. It is a cynical argument that belittles the importance of citizenship. It assumes that the very act of breaking America's laws (by coming illegally) somehow entitles one to membership. In fact, many illegals now in the U.S. cannot meet the important requirements for citizenship, however badly our economy may need their labor. Nevertheless, some leaders want to bestow not just work permits, but citizenship, precisely because they want these people to vote. But the reasons behind our concept of citizenship are more important than votes, elections, or even the need for labor.

The word "citizen" appears no fewer than 22 times in the U.S. Constitution. Our governing document guarantees some rights to all "persons" in the United States, including the rights afforded accused criminals, but the right to vote is explicitly reserved to "citizens" in five different sections. The original framers, and the authors of the more recent amendments, all understood a fundamental truth – democracy only works if people understand it. America only works if its people understand its history and the important ideals upon which it is built. They must know that *e pluribus unum*, our national motto, means our strength comes not from diversity, but from unity – from our commitment to a form of government based on the responsible individual and on the right to life, liberty and the pursuit of happiness. This is what makes our democracy unique in the world and our people one. Only people who understand and explicitly agree to uphold those principles should become American citizens.

Today we have strayed so far from that important idea that some leaders openly suggest granting citizenship – full voting privileges – to people merely because they are physically present in the U.S. Whether these recent arrivals understand America is considered less important than which political party they may vote for, a concept that cheapens and demeans our country, and the citizenship of those who worked so hard to obtain it the right way.

America was founded as a great experiment in self government. It was a laughing stock of all the monarchies and noble houses of Europe, who believed we would fail because common people could never govern themselves. During our Civil War, Abraham Lincoln understood the struggle was not just about slavery or states' rights, but about whether any government "so conceived and so dedicated can long endure." We still struggle in a world full of people who think democracy is doomed to failure. Some argue that we expect more civics education from immigrants than from our own high school students. Maybe so, but the answer is to raise the bar for public school students, not lower it for new immigrants.

Citizenship should never be granted, or accepted, merely because someone is able to sneak across the border, evade law enforcement and remain hidden long enough. It should be conveyed carefully to people who understand its true meaning, and accepted with a hand over the heart, a lump in the throat, and a tear in the eye.

Birthright Citizenship

Another factor that complicates today's illegal immigration debate is the fact that children born on U.S. soil to illegal aliens are "automatically" U.S. citizens. That fact encourages illegal immigration, as future "anchor babies" can gain legal admission for their parents. Though the concept is aggravating, most Americans have grown to accept the fact that "birthright citizenship" is settled constitutional law. It is not.

American natives may take their citizenship for granted, assuming we were all born citizens with certain "unalienable" rights, and thinking little more about it. But the framers of our Constitution thought a great deal about it. The word "citizen" was used 22 times in the Constitution and its Amendments. Indeed the 14th Amendment, which governs laws about birthright citizenship, includes the word "citizen" 5 times, and provides a clear definition.

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."

In other words, there are two aspects to American citizenship: birth or naturalization in the U.S. *and* being subject to its jurisdiction. The "jurisdiction clause" has meaning – or there would have been no need to include it. The primary purpose of the 14th Amendment was to provide full citizenship to recently freed slaves. But the "jurisdiction clause" was included precisely because *not all* people born in the U.S. are subject to its jurisdiction – because some have their first loyalty elsewhere and have not voluntarily pledged allegiance to our form of government. There are many foreigners in the U.S. at any given time who are citizens of other countries and subject to the jurisdiction of those countries, where they pay taxes, own property and vote.

Professor Edward J. Erler of California State University, San Bernardino, is a senior fellow at the Claremont Institute and co-author of *The Founders on Citizenship and Immigration*. His work includes a thorough study of the intent of
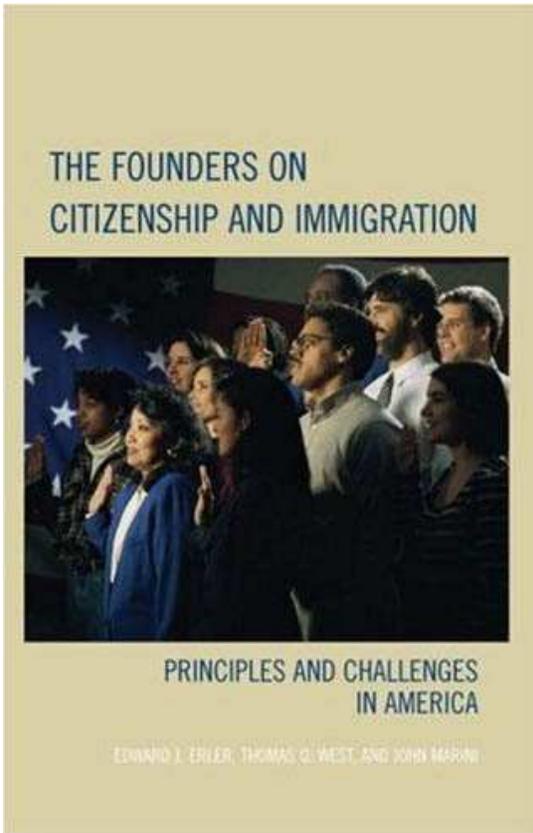
the framers – of both the Constitution and the 14th Amendment – regarding citizenship. He outlines the distinct difference between "citizens" and "subjects." In America that difference is the consent of the governed. Citizenship must be offered by the society, and it must be voluntarily accepted by one who understands the duties it includes. His analysis of the 14th Amendment is crystal clear legal scholarship – and plain common sense.

Erler points out that Ohio Senator Jacob Howard, a primary author of the 14th Amendment, made clear that the provision did not convey citizenship to

"persons born in the United States who are foreigners, aliens, or who belong to the families of ambassadors or foreign ministers." Judiciary Committee Chairman Lyman Trumbull agreed that it meant *"not owing allegiance to anybody else and being subject to the complete jurisdiction of the United States."* Thus, it did not initially apply to Indians, who in 1868 (when the Amendment was ratified) remained loyal to tribal nations, not the United States. Congress later offered citizenship to the Tribes, who had to accept it with a pledge of loyalty to the U.S. government – just as new citizens today must pledge.
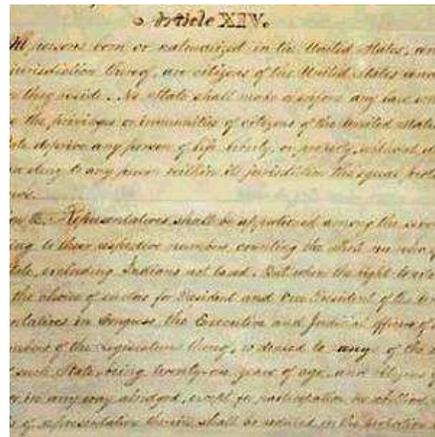
This was the heart of America's founding. Americans are not "subjects" without choice because of where they are born; they are "citizens" whose government only gets "just powers" from the consent of the governed. Thus, *new citizens* must "consent" to be governed by this system. That's why the law requires that they voluntarily pledge loyalty to our government, and understand our history, language, and institutions. But treating children of *illegal* aliens as citizens creates a class of "Americans" who have never agreed to those terms. Congress already showed its authority to decide who is "subject to the jurisdiction" of the U.S. –

it should now clarify that children of illegal aliens are not "automatic" citizens.

Some argue that native-born Americans are citizens from birth, without the need to study history, government or language. Why should they be different from the children of illegal aliens? But there is an enormously important difference between that "birthright" and the children of illegal aliens. Our forefathers fought for, earned, and defended our rights as American citizens – with their toil, their taxes, their blood, and often their lives. More than 3 million American soldiers were killed and wounded defending those ideals over the past 235 years. They most certainly did not "earn" our citizenship by ignoring our laws and violating our founding principles. Giving away citizenship – full membership in American society – to people whose only qualification is that their parents blatantly defied our laws, dishonors the sacrifices that gave us the very right to have this discussion.

All these discussions about citizenship should be viewed as entirely separate issues from those involving guest workers from other countries, and those involving how to deal with illegals already in the U.S. In each case, there should be a legitimate "path to legal status" that has nothing to do with citizenship. When these two issues are uncoupled, solutions become readily apparent.

The Red Card Solution

A New Private Sector Initiative

Bringing together the requirements of leaders concerned about multiple aspects of this issue requires a new approach, one that will both control borders and offer non-citizen work permits (Red Cards). What has been missing from the debate is a discussion of how such a program could resolve the logistic and bureaucratic problems that have caused such attempts to fail in the past. Put bluntly, border control is the easy part of the equation; it requires money, technology and manpower, all of which are available if the political will can be found. Similarly, creating a legal non-citizen worker program requires fairly straightforward modification of existing programs, and there are several such plans already proposed, as well as various plans to merely expand the quota numbers for existing visa categories. The more difficult component is the actual logistic system to be used by the workers and employers themselves. Absent a major new approach, the current system simply provides no strong incentive for either. No other proposal from any organization on either side solves that problem. But it cannot simply be swept under the rug or ignored. It will not go away – it is the heart of the problem.

Using simple and well-understood business practices in the private sector – and empowering the private sector to implement the plan – could finally provide exactly the system needed to resolve one of the nation's most difficult and pressing problems. The plan is based on a combination of several simple ideas:

The Non-Citizen Work Permit

A new non-citizen work program would be created based on work permits in the form of "smart cards" carried by the workers. These Red Cards would specify the location, employer, job and duration for which the card is issued. In addition, the card's microchip could include significant personal information about the worker: photograph, name, address, ID numbers, employer, and employment history – as well as biometric data such as fingerprints. At border crossing points, the card could be swiped like a credit card and border agents could know instantly whether it is valid and current. The cards should contain a photo imbedded in the microchip, so the identity of the carrier would also be clear, and a fingerprint requirement would make future identification of the cardholder a certainty. Similarly, when the worker arrives at the place of employment, employers would be able to scan the card in an inexpensive reader to ensure identification, and to be certain of the legal status of the worker. Law enforcement officials would also be able to check cards instantly whenever such identification may be required. If implemented correctly, these smart cards would eliminate the security concerns caused by the presence of undocumented foreigners. Current law already requires temporary workers to have valid passports and current Social Security cards. Together with these new requirements for the Red Card, these measures provide the best possible

24

security for Americans. With those concerns addressed, there is no need for a bureaucracy or committee to set an artificial quota on the number of cards, because the market would keep a constant check on the flow of workers. If the system for obtaining such cards were simplified, as described below, all foreigners should have some form of legal documentation: student or tourism visas, permanent resident (green) cards, asylum documentation, or work permits (There is no significance to the color of these cards; we refer to them as "Red Cards" merely to distinguish them from green cards). They would replace all the existing temporary work visa categories, but would be completely separate from the current system for obtaining green cards, permanent status, refugee/asylum status, or the process for citizenship. Workers would also have a strong incentive to obtain the legal status if "Red Cards" were also available for their spouses and children, so families could be kept intact. Most other countries issue guest worker cards to immediate family members and more than 4 million Americans work and live abroad as "guest workers" in nearly every country of the world.

Controlling the Borders

All international borders and points of entry to the United States must be controlled absolutely, using whatever technology and manpower is available, so that illegal clandestine entry is eliminated – whether by land, sea or air. Congress and the President agreed in 2004 to add another 2,000 border guards, and there are now more than 20,000 border agents. In addition, installation of the technology

required to monitor all border crossing sites should be authorized and funded. Although the Mexican border is the source of the vast majority of illegal crossings, the Canadian border must not be ignored, since the national security risk is at least as serious there. Many leaders see complete border control as prerequisite to the workability of any new guest worker program, but the two must go hand in hand. Remember, 80% of Americans understand that border control is not fully possible without some form of guest worker program, so there is a chicken-and-egg problem. Before criminalizing employers and employees alike, they must be given some practical process for getting "legal." However, once the system is in place, tough civil penalties and absolute border control are crucial to success. It should be noted that the right kind of program would also make such border control easier, and cheaper. If the vast majority of illegals had no further reason for illegal entry, border control would be considerably less expensive. The current complexity and danger of illegal crossing and the constant threat of deportation afterwards, provide a very strong incentive for workers to apply for the Red Cards, especially if the cards can be obtained in a fairly simple system.

The Private Sector Role

The meat of this proposal is that private employment agencies (staffing companies) would be licensed and authorized to set up "Non-Citizen Worker" offices in Mexico and other countries. They would be licensed by the federal Office of Visa Services and empowered to issue "Red Cards" to applicants in their local offices. Prior to issuing the cards, the

agencies would be required to run an instant background check on the applicant. These checks, much like those used for firearms sales in the U.S., would be accomplished by contact with the U.S. government and the government of the native country. Cards should not be issued to workers from countries that cannot or will not cooperate in this important respect. The goal is to ensure the cards are not issued to applicants with criminal records or those who have violated the terms of previously issued permits or visas.

Some leaders have called for the Office of Visa Services to be transferred from the State Department to the Department of Homeland Security (Ed Meese and Matthew Spalding made the suggestion in their October, 2004 Heritage Foundation paper, for example). Whether the Office is transferred or left at State, it needs the ability to check applicants against databases of the Homeland Security Department and FBI. Completing such background checks quickly is crucial to the success of the program. Firearms purchases require such checks under the "Brady bill" and are rarely delayed more than 24-48 hours (they are frequently accomplished in just a few minutes). Such a quick turn-around time would also ensure the willingness of workers to wait for the process and obtain a legal Red Card.

Researchers have learned that the waiting time of months or even years required for the few work visas issued, along with the high paperwork cost, simply makes illegal border crossings the only alternative, in spite of the danger. But employment agencies whose profit depends on the success of their effort have a strong incentive that

governments do not have. Their success will depend on getting the background checks done, getting the Red Cards issued, ensuring the compliance of the workers, and affording legal certainty to employers. The business market will react quickly to timely and accurate performance. Remember, in the private sector companies only get paid if they do the job well, and competition ensures efficiency, competence and a fair price. Of course, government oversight would ensure against ignoring the security requirements, as with firearms dealers in the U.S. who lose their license if they fail to comply with that law. Most illegal workers say they would prefer to be in the U.S. legally – if there was a dependable and orderly system for obtaining work permits. This program would accomplish that.

Helping Employers and Employees

Employers would simply post jobs with the private employment agencies specifying location, duration, wages and other required information – just as they often do within the U.S. today. There are dozens of employment firms, staffing companies, human resource companies and others who specialize in this field, and make their living putting employers and employees together. This would not change the current requirement that employers demonstrate attempts to hire local citizens before seeking non-citizen workers. Since employment firms charge fees for their services, the incentives will always favor local American workers – why pay a fee if you can find the workers you need locally?

Part of the goal of this proposal is to eliminate the undocumented cash system used by so many employers and workers today. That means employers will have to pay taxes, and follow all the laws that would otherwise relate to hiring local employees. That includes social security, workers compensation, minimum wage, and all other labor laws that apply to American workers. For many employers this would mean a slightly more complicated system, and perhaps slightly higher wages. But most would have a strong incentive to comply: a steady and dependable supply of needed workers, coupled with certain and severe penalties for hiring illegal workers.

Today some employers hire illegals purposely to lower labor costs, but many do so without knowing whether the workers are legal or not. Forged documents are common and inexpensive, so even employers making a good-faith effort to hire legal residents are subject to potential fines and other penalties. Under the proposed "Red Card" system, knowing the workers will be available when needed, verifying their identities and their legal status, and keeping the same workers for the duration of the job, would provide strong incentives for compliance with labor and tax laws.

There is always the need for workers to be able to change jobs, either to accept a better offer or to escape a bad situation, and employers should not be able to use the program to "trap" their employees. A simple process of contacting the employment agency, registering for the new job and getting a new Red Card would address such cases. Similarly, an expiring job could be renewed just as

people renew their vehicle registrations, by the employer contacting the employment agency, changing the expiration date and securing new Red Cards for their workers.

Social Security

One interesting and challenging aspect of any proposal for legalizing the illegal population is that it would result in an increase in taxes withheld, including FICA taxes. Legal workers pay 7.65% of their earnings in FICA taxes (6.2% for Social Security, and 1.45% for Medicare), and their employer matches it with another 7.65%. However, foreign workers are not eligible to collect Social Security upon retirement, whether they remain in the U.S. or not, so keeping their money in the Social Security Trust Fund is wrong. On the other hand, those contributions could be given to the States where the employment occurred, and would be tremendously helpful in offsetting the costs of education, health care, corrections, and social services for foreign workers. These costs are all borne by state and local governments, while the federal government keeps the money. That should be changed. Polls show that most Americans do not object to foreign children in schools, so long as their parents are paying their taxes like everyone else. Thus, the emotion currently generated by the illegal status of these workers might be lessened by a program of using such funds to offset state and local costs.
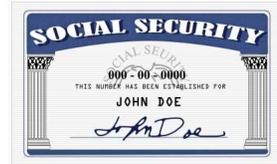
Toward Citizenship?

The "Red Card" would provide no path to

27

citizenship or to permanent resident status at all. In accordance with the founding American principle of equal opportunity under the law, anyone in the world can apply to be a U.S. citizen, whether they are here as guest workers or not. But the process for immigrants wanting naturalization or permanent status is different than that needed for simple work permits. Remember, citizenship is a function of the federal government, but matching workers with jobs is a private sector function. Private companies hire, fire, pay, promote, and pay taxes on workers every day – those do not need to be complex governmental processes. Thus, the two processes must remain separate, so red Cards (non-citizen work permits) should not give applicants a leg up toward citizenship. Although successful completion of guest work over several years could be seen as evidence of good character and dependability, it should not place a worker at the head of any line.

In fact, contrary to a common misunderstanding, the vast majority of illegal workers in the U.S. are not here seeking permanent residence or citizenship. Most have families at home, come here to earn money they cannot hope to match at home, and have every intention of returning home. Those who desire citizenship or permanent resident status should apply like all others in the already-existing systems. Anyone from anywhere should be able to apply for U.S. citizenship at any time, including temporary workers, but they all should follow the same rules, procedures, timelines, and requirements. For the large majority of workers, though, this is not an issue and it should not become an issue in creating the new "Red Card" program.

Tracking Workers

Employers would be able to check the legal status of applicants with a simple card swipe to validate the "Red Card" and identify the worker. It would remain illegal to hire any worker without a card or whose card had been cancelled, or to hire such a worker for a job other than that specified on the card. There are some instances in which a worker might come to the U.S. with a valid permit, then find himself in an unworkable situation and need to change jobs. A system for doing so, in consultation with duly constituted authorities, should be included, rather than requiring the worker to return home and re-apply. Such a system could avoid potential concern about mistreatment of non-citizen workers, while still ensuring the U.S. government knows where the worker is.

Enforcement

Strong enforcement on several levels would be required for this program to succeed. First, border control is essential to eliminate the availability of illegal "cash" workers, as previously noted. Second, sanctions against employers who hire illegals must be enforced. Third, workers would be required to stay on the job for which the Red Card was issued unless authorities had granted a job change. Otherwise, employers would be required to report immediately any worker who disappeared, because the card could immediately be cancelled for workers who left the job, or who commit crimes. These sanctions, if enforced, would

ensure workers whose cards were cancelled had no choice but to return home – they would be unable to find work.

The U.S. Chamber of Commerce and other business groups rightly express grave concern about sanctions today; because of the difficulty many employers have in determining the legal status of workers, and because of the fear that workers may not be available. However, such sanctions would make sense to employers if the system for legally obtaining needed workers were in place, and if ensuring the legal status of workers was a simple matter. Those who support a new work program but suggest that border security must come first actually have it backwards. Criminalizing people before giving them any opportunity to "get legal" is wrong, especially considering that the government actually created the current unworkable system by refusing to offer any program for workers to find out what jobs may be available, or for employers to find the workers they need, particularly after artificial visa quotas are already filled. Still, once such a program is in place, strong workplace enforcement and border control are necessary to dry up the illegal labor market.

Finally, workers already in the U.S. illegally must be required to leave the United States, apply for and legally obtain the Red Card from a licensed employment agency. They should not be penalized for doing so, since part of the objective is to provide a strong incentive for such unauthorized workers to either leave the country or become documented and work legally. They would have a strong incentive to do so if

the other elements of this plan were implemented, but cannot be expected to leave, absent a strong certainty that they will be allowed to return to the U.S. as legal workers. If that certainty were provided, as under the Red Card Solution, they would have the ability to gain legal status, to continue current employment following a brief trip to obtain the card, to come and go across the borders easily, and to enjoy some of the benefits American workers have on the job, especially proper insurance, fair wages, protection against crime and discrimination, opportunities for advancement, and all the other benefits of hard-working, tax-paying employees.

Costs and Benefits

Estimating the exact costs of such a new approach would be hypothetical and difficult, except the added cost of border security. Although the cost of increased security is already well documented, there is every reason to expect such control would be less expensive and easier if the largest percentage of illegal border crossers had no further reason to be there. Part of the advantage of this new approach is that government itself would not have to bear much of its cost. The cost of the new cards and the required background checks would be born by the private sector. Employment agencies wanting to issue the cards would open their local offices, arrange the system for job postings, acquire the cards themselves from a private licensed manufacturer (almost all of the 700 million smart cards worldwide are made by just a handful of companies), and monitor compliance by the workers (who would become clients to these

companies). The fees they charge to applicants would have to cover these costs and generate a profit, but would not be unreasonable, because competition from other companies would keep the fees within the bounds of what the market could bear. Governments need play no role in determining these fees, though the U.S. government could finance its cost of background checks by charging the employment agencies a user fee, which would also be passed on to the employer, employee, or both. These costs would pale in comparison to the current cost of illegal aliens, born largely by state and local governments. But the benefits of eliminating the illegal and undocumented system now in place would be inestimable.

The benefit to national security of border control is at the heart of government's first responsibility to its citizens. The availability of a dependable workforce is central to American businesses, especially small businesses where most new jobs and economic activity are generated, so the benefit of such a program to the economy is enormous. And for American citizens, the peace of mind that comes with knowing our borders are safe, our economy strong, and our ideals intact is priceless.

How Did We Get Into This Mess?

A Brief History of the Issue and the Solution

The government estimates that about nine million Mexican nationals live in the United States, including some 4 million it believes are in the country illegally. Other observers across the political spectrum commonly estimate the number here illegally between 10 and 20 million. Pressure to do something about the situation has steadily increased over the past decade. The Bush Administration tried unsuccessfully to push a comprehensive reform bill through Congress, only to be overcome by the competing interests of political factions. The Obama Administration is also pushing for reform, though prospects are still considered dim for the same reason. Meanwhile, candidates throughout the country must deal with the issue gently, because amnesty for illegals has become enormously unpopular with voters, even though some aspects of the national economy have grown dependent on a workforce that includes millions of workers in the country illegally.

Migration across the Mexican border has been a political issue and an economic reality for more than a century, especially since the Spanish American War. Between 1901 and 1910 almost 50,000 Mexicans were legally admitted to the US, a number that has grown more or less steadily every decade since, reaching nearly 2 million during the 1990's. But for the past 100 years or more, illegal border crossings have often outnumbered legal entries to the U.S., particularly following periods of stricter regulation of immigration. For instance, when Congress mandated literacy tests

for immigrants in 1917 the number of illegal border crossings spiked.

The "Bracero" Program clearly reduced the number of apprehensions of illegals at the border from nearly 1 million in the mid-50's. During the program's heyday, that number fell to a low of only 35,000 – a 96% drop. When the program was abolished, the number of illegal border apprehensions quickly climbed back up to 1 million per year and has continued to increase ever since. Despite all the program's well-documented problems, it cannot be denied that a legal system of work permits helps control the border. That is a matter of historical fact that today's leaders must consider.
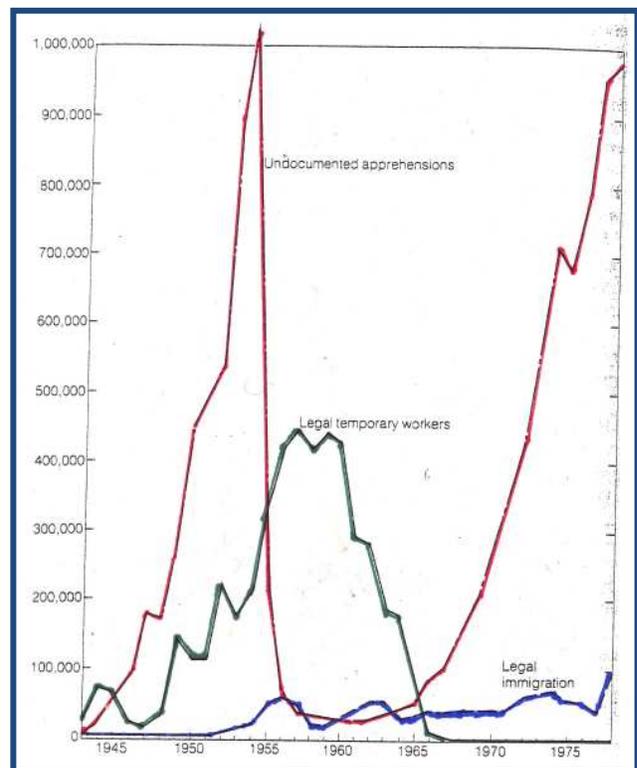
American public opinion on "illegal immigration" is complex, but has had one constant: it has always been directly linked to America's economic situation. Wartime labor shortages have always increased demand for labor, leading to more border crossings. The need for

Bracero Workers, 1942

farm labor during World War I was so severe that the INS commission temporarily waved the literacy requirement, and during World War II it led to creation of the "Bracero" program. Conversely, economic downtimes in the US have led to public demands for crackdowns because Americans needed the jobs. During the first four years of the Great Depression 345,000 Mexicans were deported, and during the 1954 recession a massive border roundup called "Operation Wetback" led to the deportation of more than a million.

Concerns about the treatment of farm workers, combined with pressure from labor unions (which have generally opposed all guest worker programs), led Congress to kill the "Bracero" Program in 1964, so the flow of illegals across the border has continued to increase. The Immigration and Naturalization Act of 1965 abolished the old system of national quotas and changed the criteria for immigration to a system based on family reunification and needed job skills. Illegal entries into the U.S. continued to increase. The Immigration Reform and Control Act of 1986 offered amnesty to illegal aliens in the US before 1982, imposed fines on employers who knowingly hire illegals, and established a temporary resident category for agricultural workers. But the border control promised by the 1986 Act never happened, leading to the hostility and distrust many Americans feel toward any reform today.

The 1994 North American Free Trade Agreement (NAFTA), despite its many advantages to the American economy, also caused a spike in illegal border crossings. As tariffs were lifted on imports to Mexico, prices of farm commodities dropped sharply in Mexico, causing increased migration from the land to cities – and across the border to better-paying jobs. The INS responded by attempting more thorough control of key border crossing checkpoints ("Operation Gatekeeper"), but the result was to force migrants to cross increasingly inhospitable terrain, along with the growth of underground tunnels and other more clandestine and dangerous strategies. Human smugglers called "coyotes" now get wealthy, often at the expense of the migrants' safety – the deaths of illegal aliens crossing the border have sharply increased since 1996, to about 400 per year.

Congress responded to the NAFTA problem in 1996 with a sharp increase in funding for border patrol security, and after 2006 with increased penalties, hundreds of miles of border fencing and additional technology. During those years the number of border patrol agents has more than quadrupled to over 20,000 and the number

U.S. Mexico Border Fence

of apprehensions also sharply increased, to a high of 1.6 million in 2000. The number of apprehensions has dropped each year since then – down to 556,000 in 2009 – because stricter enforcement has deterred illegal crossings. Yet it is unclear whether these better security measures are really succeeding, if migrant workers have simply found better ways to avoid detection, or if fewer are coming to the U.S. because of the recession. One thing is certain: the amount of money Mexican workers sent home increased from $10 billion a year in 2002 to almost $25 billion by 2009 – the second largest source of revenue in Mexico (second only to oil).

As a result of the public concern about unknown and illegal residents, heightened after 9/11, policy-makers from the White House to the courthouse are struggling with solutions. Many in Congress argue the economic importance of the immigrant workforce

Despite new security measures, much of the border remains porous and poorly guarded

and push for creation of a new legal guest worker program, along with a reasonable path to permanent status and citizenship for those already in the U.S. Others press the case for border control, security and a jobs policy that puts Americans first, and still others argue the need to eliminate public subsidies for illegal activity. Congress has thus far been unable to muster a majority on any side, because all of them are right to some degree, and thus far no one has

proposed a solution that is a victory for all sides. The Bush Administration made several attempts to pass immigration reform bills, an effort that continues under President Obama. But the political divisions among interest groups and congressional leaders make that an elusive goal.

Meanwhile, the issue continues to grow in importance to voters because illegal immigration continues at an alarming rate, and because illegals are now being seen in every occupation and in nearly every city and community. Previously concentrated primarily in 5 states (California, Texas, New York, Florida, and Arizona), illegals are rapidly disbursing elsewhere across America. Demographers have followed rapid growth in the illegal populations in North Carolina, New Jersey and Illinois, all of which have between 300,000 and 400,000 illegals. But the growth continues beyond those major states. Today Colorado, Washington, Georgia, Virginia, Maryland and Massachusetts all have populations of over 250,000 illegals. In Colorado more than half of all foreign-born residents are illegals.

Similarly, the demographics of these people are shattering many long-held beliefs. For instance, not only are they no longer confined to farming occupations – VERY few are engaged in agriculture at all. According to Pew Hispanic Center research, only 3% of illegals are employed in farming. Fully 33% work in service occupations, 17% in construction trades, and the rest in production, installation, repair, transportation and moving. Even 10% of the illegals are in management, business and professions. The old "Bracero-era" perception of men

working in the fields while their wives work the packing sheds isn't accurate anymore, either. Only 56% of illegal women work at all (compared to 73% of American women), with massive numbers becoming stay-at-home moms. Although the stereotype of single men coming to America to work is a commonly-held view, in fact fewer than half of the illegal adult men are single. And only one of five illegal adult women is single. This is an important statistic, because as border security has intensified, making it more difficult for these workers to come and go across the border, they increasingly feel "trapped" in America, so they seek to bring their families. In other words, increased border security has made at least this aspect of the problem worse – converting workers who intended to be temporary into permanent immigrants.

In addition, there are now estimated to be perhaps 4 million American children – U.S. citizens – whose parents are illegals. That's more than double the number of illegal children in the U.S. The legal system declares any child born in America an automatic U.S. citizen, so many women come illegally into the U.S. precisely because it gives them a special place in the immigration system, a means to "cut in line." Although "birthright citizenship" is a misinterpretation of the Fourteenth Amendment to the Constitution – that Congress should address – it creates a near-term legal problem for those who seek tight border security. Simply deporting such families is not only difficult, but in many cases it is legally impossible because of the citizenship of their children.

This illegal population remains of deep concern to many Americans, and continues to drain financial resources, especially at the local government level. The educational level of illegals is far lower than that of American citizens. Over 50% of illegal high-school-age students drop out before graduation. About a third of the illegals have less than a 9th grade education. Illegals also tend to work at lower-wage occupations, with the average illegal individuals and families earning less than half the average American wage. Since about 3 times more illegals live below the federal poverty line than citizens, they are over-represented among people requiring social services, and in jails. One of the most significant problems (health care) is worsened by the fact that so many illegals are uninsured. While only 14% of natives are uninsured, almost 60% of illegals have no health insurance. The drain on taxpayer-funded resources in the United States will continue to increase until a solution is found to this very complex issue.

The answer is in the simplicity and clarity of the Red Card Solution – securing the borders, providing the workers that a strong economy needs, and ensuring the advantage of American workers.

Learn more at
www.RedCardSolution.com