

**ANALYSIS OF DRAFT PROPOSAL ON IMMIGRATION:
PROPOSAL PUTS FORWARD QUESTIONABLE IDEAS
ON EMPLOYMENT-BASED IMMIGRATION; FAMILY
PROVISIONS VIOLATE PRESIDENT'S PROMISES**

EXECUTIVE SUMMARY

A draft immigration proposal by the Bush Administration presented recently to Democratic Senators would take the wrong approach to employment-based immigration for highly skilled individuals and unnecessarily recommends cutting certain family immigration categories, violating the President's campaign pledge to "encourage family reunification." The proposal also recommends imposing excessive fees and conditions on both future temporary workers and individuals now in the country who may become eligible for legalization.

Research shows the typical legal immigrant already possesses a higher education level than the typical native. Family immigration provides important economic benefits, particularly in fostering entrepreneurship, while also promoting the type of family cohesiveness that political office seekers tell voters is vital to the nation's future. A large majority of immigrant-owned businesses in the United States are individual proprietorships relying heavily on family labor. Family immigrants helping with entrepreneurial businesses or family child care would be more beneficial to the nation than the entry of unattached individuals, which a Canadian-style point system would encourage.

U.S. employers want to hire specific skilled individuals, not people in general, as a point system would promote. Moreover, companies thrive on certainty. Replacing the current uncertainty in the immigration system with another form of uncertainty (Will company-identified individuals be able to pass a bureaucratic "point" test?) is not a recipe for building a highly competitive U.S. workforce. While the current backlogs and delays in green cards create uncertainty, at least employers are able to sponsor specific individuals. A point system would transfer power to federal bureaucrats at the expense of individuals, families and employers.

The most effective policy to promote skilled immigration is to exempt from the current quotas employer-sponsored immigrants with a master's degree or higher. In addition, Congress can raise the quotas for both H-1B temporary visas and green cards, eliminate the per country limits for employment-based immigration and allow international students an easier path to remain in the country after completing their studies. This is precisely the package of reforms the Senate approved last year when it passed Senator John Cornyn's SKIL bill as part of S. 2611. Congress can simply return to the key reforms made in the SKIL bill, rather than engage in wholesale reforms that will undermine the current immigration system. Denying U.S. citizens the ability to sponsor adult children or siblings is both unnecessary and politically divisive. The bill the Senate passed last year raised quotas for both family and employment-based immigrants and Congress can do so again this year.

BACKGROUND

As some newspapers have reported, the Bush Administration has circulated a 23-page document that is said to encapsulate concepts put together in discussions with a small group of Republican Senators. Homeland Security Secretary Michael Chertoff and Commerce Secretary Carlos Gutierrez recently distributed the document at a meeting with Democratic Senators and their staff. White House spokeswoman Dana Perino has characterized the draft as “discussion points and nothing concrete,” according to the *Houston Chronicle*.¹

Despite maintaining some distance from the document, certain parts at least appear to represent policy positions held by the White House and some Senate Republicans. Therefore, it is worth analyzing key aspects of the proposal.

FAMILY IMMIGRATION: THE PRESIDENT’S CAMPAIGN POSITION

The Bush Administration’s draft document proposes ending the ability of U.S. citizens to sponsor their own children for immigration if those sons or daughters have reached the age of 21. If the policy would apply to their own families, most Members of Congress would agree they would have a difficult time welcoming the immigration of their 19-year-old son, while barring the door to their 22-year-old daughter.

In addition, under the draft proposal Americans would be told they are prohibited from sponsoring a brother or sister for immigration. Finally, the proposal would restrict even the admission of parents of U.S. citizens for immigration.² For a President who campaigned in 2000 using pro-immigration rhetoric as strong as any Presidential candidate in history, this policy change would represent a stunning reversal and, in some minds, even a betrayal.

“Immigration policy was one of the ways in which George W. Bush defined himself in his 2000 campaign as a different kind of Republican, a Texas Governor who believed that ‘family values don’t stop at the Rio Grande,’” writes *Time* magazine.³ However, in crucial ways the draft proposal reverses that stand.

The President’s 2000 Election campaign site, which delineated his policy positions on several key issues, stated:

Governor Bush believes that immigration is not a problem to be solved, but the sign of a successful nation. As Governor of a border state, he knows first-hand the benefits legal immigrants bring to America. While he is strongly opposed to illegal immigration, he believes more should be done to welcome legal immigrants. Therefore, he will establish a 6-month standard for processing immigration applications, *encourage family reunification*, and split the INS into two agencies: one focused on enforcement, and one focused on naturalization and immigration services.⁴

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No matter how one spins it, eliminating family categories to make it perhaps impossible for individuals to become reunified with close family members cannot be described as “encouraging family reunification.”

The draft proposal provides no legitimate rationale for eliminating family immigration categories. The fact that long waits exist in some categories simply means that Congress has not raised the limits to correspond with the demand. The appropriate solution is to raise the quotas, as the Senate did in its immigration bill passed in 2006. It is alleged in the document that eliminating family categories would reduce “chain migration” but this is an essentially meaningless term that merely describes what has happened through the history of America – some family members come to America and succeed, and then sponsor other family members.

In place of certain family categories, the proposal discusses instituting a Canadian-style point system, which would work by establishing a “score” and assigning admission “points” for age, education level and other characteristics for those immigrants who seek entry. Only those who achieve the score could immigrate.

Some say a rationale for this element of the draft proposal is to improve the skill level of immigrants. In reality, the typical legal immigrant already has a *higher* skill level than the typical native, so upon examination the basic rationale falls apart for eliminating family categories and instituting a “point system.”

- The New Immigrant Survey, which examines only legal immigrants finds: “The median years of schooling for the legal immigrants, 13 years, is a full one year higher than that of the U.S. native-born.”⁵
- The Pew Hispanic Center reports: “By 2004, all groups of legal immigrants in the country for less than 10 years are more likely to have a college degree than natives . . .”⁶
- The Pew Hispanic Center also reports that the average family income for a naturalized U.S. citizen in the country more than 10 years in 2003 was more than \$10,000 a year higher than a native (\$56,500 vs. \$45,900).⁷
- Writing in the May 1999 *American Economic Review*, economists Harriet Duleep, then a senior research associate at the Urban Institute, and Mark Regets, a senior analyst at the National Science Foundation, found that the gap in earnings between new immigrants and natives largely disappears after 10 years in the United States, with immigrant wage growth faster than native (6.7 percent vs. 4.4 percent).⁸

Simply put, while the policy of eliminating family categories would cause real pain for families, it would create little or no net benefit with regards to its stated purpose. Moreover, the draft proposal’s advocacy of requiring every

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American with a relative on the immigration waiting list to re-file their applications and pay a \$500 fee (essentially a new tax) displays disdain or outright hostility toward such Americans.

Most past concerns with immigrant skill level focused on reports using Census data that included many illegal immigrants. Two of the studies cited above differentiate between legal and illegal immigrants and show “low education” level among legal immigrants is not a problem. Legal immigrants do congregate at the top and bottom of the education scale, but less so than Census data imply. Besides, economists agree that immigrants increase America's labor productivity most when they fill niches at the top and bottom. Moreover, the draft proposal's advocacy of a temporary worker program is recognition that America requires workers at different skill levels.

Family immigration provides important economic benefits, particularly in fostering entrepreneurship, while also promoting the type of family cohesiveness that political office seekers tell voters is vital to the nation's future. “A large majority of immigrant-owned businesses in the United States are individual proprietorships relying heavily on family labor,” testified University of South Carolina Professor Jimmy M. Sanders before the Senate Immigration Subcommittee. “Our experiences in the field suggest that the family is often the main social organization supporting the establishment and operation of a small business.” Sanders notes: “The family can provide important resources to members who pursue self-employment. Revision of Federal law in the mid-1960's to allow large increases in immigration from non-Western European societies and to give priority to family reunification increased family-based immigration and contributed to a virtual renaissance of small business culture in the United States. By contrast, labor migration that involves single sojourners who leave their families behind and work temporarily in the United States has produced far less self-employment.”⁹ Family members immigrating to support other family members in caring for children and running family-owned businesses are more likely to benefit the United States economically than unattached individuals who achieve a certain number of points based on criteria designed by government bureaucrats.

In addition to these economic benefits, it is important to remember that family immigration has always been the foundation of America's immigration system. It is part of the country's tradition going back from the Mayflower through Ellis Island and to the present day. The historical records at Ellis Island make clear that most immigration prior to the 1920s was family-based, and such unification never entirely lost its role. A report of the House Judiciary Committee on the 1959 legislation states, “The recognized principle of avoiding separation of families could be furthered if certain categories of such relatives were reclassified in the various preference portions of the immigration quotas.” Joyce Vialet of the Congressional Research Service analyzed the 1965 Immigration Act and concluded, “In response to the demand for admission of family members, Congress enacted a series of amendments to the Immigration and Nationality Act (INA), beginning in 1957, which gave increasing priority to family relationship. The family preference categories included in the 1965 Act evolved directly from this series of

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amendments. Arguably, the 1965 Act represented an acceptance of the status quo rather than a shift to a new policy of favoring family members.”¹⁰

IS THE GOAL OF A POINT SYSTEM TO REDUCE HISPANIC IMMIGRATION?

Harvard economist George Borjas, an advocate of a point system, concedes that keeping out Mexicans is a goal (or at least the end product) of a point system. “Most likely,” he writes that under a point system, “the predominance of Mexican immigrants and of immigrants from some other developing countries will decline substantially.”¹¹ Is the goal of the Bush Administration and some Republican Senators to prevent immigration from Mexico and Central America? One would hope that is not the intention. But whether or not this controversial idea is the intended goal, it is the most likely outcome of the proposal. Lending credence to the idea the draft proposal means to reduce immigration from Mexico and Central America is a controversial provision in the proposal that would prohibit current illegal immigrants who obtain legal status from ever being permitted to sponsor family members.

A POINT SYSTEM: THE FEDERAL BUREAUCRAT EMPOWERMENT ACT

While the President and Republicans in Congress were elected on a platform of empowering families and entrepreneurs, the draft immigration proposal empowers unelected bureaucrats. In short, a point system would transfer power to federal bureaucrats at the expense of individuals, families, and employers. “A point system has many imperfections,” concedes point system advocate George Borjas. “A few hapless government bureaucrats have to sit down and decide which characteristics will enter the admissions formula, which occupations are the ones that are most beneficial, which age groups are to be favored, how many points to grant each desired characteristic and so on.”¹²

After noting that the list of occupations, each assigned points, takes up 10 pages in the Canadian system, Borjas writes, “Most of these decisions are bound to be arbitrary and clearly stretch the ability of bureaucrats to determine labor market needs well beyond their limit.”¹³ But bureaucrats are not well suited to handle labor market decisions. Moreover, no government test can ever measure life's most important intangibles: drive, individual initiative, and a commitment to family.

Those who advocate limiting the entry of “less skilled” immigrants system are also among the most vociferous opponents of skilled immigrants. In 1998 and 2000, anti-immigrant groups and their Congressional allies fought the expansion of H-1B temporary visas for high-skilled, foreign-born engineers and computer scientists. But these same groups also oppose family immigration. Borjas himself derisively refers to scientists and engineers entering under H-1B temporary visas as “high tech braceros,” equating them with the migrant farm workers of the 1950s.¹⁴

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Finally, one should note that the Canadian point system is designed with a different purpose in mind. Given its relatively small population, Canada needs to attract immigrants to the country. In the United States, attracting skilled immigration is not a problem. The American problem is straightforward – Congress has failed to increase the quotas for H-1B temporary visas and employment-based green cards. This has resulted in year-long delays in hiring highly skilled individuals on H-1B temporary visas and five-year or longer delays for employer-sponsored immigrants to complete the green card process.

THE CORRECT POLICY TO EXPAND SKILLED IMMIGRATION IS TO INCREASE EMPLOYMENT-BASED IMMIGRATION

U.S. employers want to hire specific skilled individuals, not people in general. This is the most serious flaw behind a point-based system. When companies recruit, often off U.S. campuses, they find skilled foreign nationals along with many talented Americans. One-half to two-thirds of graduate students in electrical engineering, computer science and other key fields at major U.S. universities are foreign nationals.¹⁵

Companies thrive on certainty. Replacing the current uncertainty in the immigration system with another form of uncertainty (Will company-identified individuals be able to pass a bureaucratic “point” test?) is not a recipe for building a highly competitive U.S. workforce. While the current backlogs and delays in green card create uncertainty, at least employers are able to sponsor specific individuals.

Moreover, in the future, there will be uncertainty about what level of immigration any point system will sustain. Without employers advocating for higher numbers to hire particular individuals (and other organizations and family members seeking the immigration of specific family-based immigrants), it may be difficult to sustain a particular numerical limit for the point system. In the end, we will not end up with a solution but only a different set of problems.

The draft proposal posits a false choice between family and employment-based immigration. In a key respect, the point system concept is little more than a Trojan horse designed to reduce family immigration. In the final analysis, it is far from the best way to help employers hire the key people they need or to allow high skilled individuals to stay in America after graduating from a U.S. university.¹⁶

The most effective policy to promote skilled immigration is simply to exempt from the current quotas employer-sponsored immigrants with a master’s degree or higher. In addition, Congress can raise the quotas for both H-1B temporary visas and green cards, eliminate the per country limits for employment-based immigration and allow international students an easier path to remain in the country after completing their studies.

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These are not revolutionary ideas. In fact, this is precisely the package of reforms the Senate approved last year when it passed Senator John Cornyn's SKIL bill (S. 2691) as part of the larger immigration bill. (Six Republican Senators cosponsored the SKIL bill.) Congress can simply return to the key reforms made in that bill, rather than engage in wholesale reforms that will undermine the current immigration system.

Denying U.S. citizens the ability to sponsor adult children or siblings is both unnecessary and politically divisive. The bill the Senate passed last year raised quotas for both family and employment-based immigrants and Congress can do so again this year.

IMMIGRATION REFORM

While a large-scale discussion of immigration reform is beyond the scope of this analysis, it's clear the draft proposal at least recognizes the United States needs to provide a way for lesser-skilled workers to enter America legally and fill jobs. As a previous analysis by the National Foundation for American Policy has shown, increasing legal admissions under the Bracero program reduced illegal entry to the United States by 95 percent between 1953 and 1959.¹⁷ One does not need to recreate the Bracero program to enact a well-functioning temporary worker program that would serve the needs of employers and treat employees well.

The draft proposal recognizes there are two different issues: 1) the future flow of workers and 2) workers already in the United States. The proposal falls short in both areas. First, it requires any future worker who enters legally to depart the United States for 6 months after working for two years. Such a departure requirement is disruptive for both employees and employers. Second, the proposal does not make it easy (or perhaps even realistically possible) for future workers to be sponsored for a green card by employers. Forcing an individual to stop working and wait outside the country while a highly uncertain application process moves forward will dissuade both employees and employers. If a high-tech employer can sponsor an engineer, then why can't a company sponsor other types of workers who fill a need and fit in well? Third, it does not allow individuals to bring a spouse or child with them to the United States.

Finally, requiring that an employer or employee pay a \$1,500 fee to enter and work legally for two years shows little realism about the finances of either the worker or the employer. The U.S. government has largely created the current situation regarding illegal immigration by failing to provide adequate legal avenues to fill lesser-skilled jobs. Therefore, assessing such a large tax on employers and employees seeking to play by the rules makes little sense and has the unintended consequence of encouraging a black market in labor – precisely the opposite of what immigration reform is supposed to accomplish.

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The draft proposal presents other problems. If one wants individuals now here illegally to “come out of the shadows,” as the document states, then the draft proposal is not the right approach. The proposal’s allotted fines and fees for regularizing status and then obtaining a green card total up to \$17,000 for a worker. Relatively few of the staff working for U.S. Senators and Representatives would be able to afford such fees, even if some of the amount is spread out over time. To put that amount in perspective, the Federal Election Commission fined former Senate Majority Leader Bill Frist’s campaign only \$11,000 for failing “to disclose a \$1.44 million loan taken out jointly by the campaign and Frist’s 1994 campaign committee.”¹⁸

Requiring individuals here illegally to leave the country, particularly when combined with the heavy fees, makes it unlikely that those now in the country will take up an offer with so many strings attached. The presence of many individuals in the country illegally will make it harder for new temporary work visas to reduce future illegal entry. Moreover, without adequate measures to address the situation of those already in the country it will be difficult to garner Democratic votes in Congress.

CONCLUSION

In the end, the President and the Congress need to decide whether immigration policy will be made only with the assent of those most opposed to immigration. If not, then it appears likely a consensus can be formed by a majority of legislators in both the House and Senate to make needed reforms that will reduce illegal immigration, preserve family immigration, establish new legal avenues for lesser skilled workers and expand opportunities for high-skilled, employment-based immigrants.

END NOTES

¹ Michelle Mittlestadt, "The Puzzle," *The Houston Chronicle*, April 4, 2007.

² There currently is no numerical quota on the immigration of the parents of U.S. citizens. The draft proposal contemplates placing a quota that would restrict the immigration of such individuals to the United States.

³ Karen Tumulty, "The Immigration Divide," *Time*, March 30, 2006.

⁴ George W. Bush for President 2000 Web Site. Emphasis added.

<http://www.4president.org/issues/bush2000/bush2000issues.htm>.

⁵ New Immigrant Survey (1998); Stuart Anderson, "Muddles Masses," *Reason*, February 2000.

⁶ Jeffrey S. Passel, *Unauthorized Migrants: Numbers and Characteristics*, Pew Hispanic Center, June 14, 2005, p. 24. Passel points out that this is the case "notwithstanding the continued over-representation of legal immigrants at low levels of education."

⁷ *Ibid.*, p. 31.

⁸ Anderson, "Muddles Masses."

⁹ Testimony of Jimmy M. Sanders before the Senate Judiciary Committee, Subcommittee on Immigration, "Immigrant Entrepreneurs, Job Creation, and the American Dream," April 15, 1997.

¹⁰ Anderson, "Muddles Masses."

¹¹ *Ibid.*; George J. Borjas, *Heaven's Door*, Princeton University Press, 1999.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ National Science Foundation.

¹⁶ Today, highly skilled researchers and scientists endure waits of 5 years or more for green cards, preventing such individuals from advancing their careers and signaling to international students and other innovators that America may not be the place to build your future.

¹⁷ Stuart Anderson, *The Impact of Agricultural Guest Worker Programs on Illegal Immigration*, National Foundation for American Policy, November 2003, p. 2.

¹⁸ Associated Press, "FEC Fines Frist's 2000 Senate Campaign," *USA Today*, June 1, 2006.

ABOUT THE NATIONAL FOUNDATION FOR AMERICAN POLICY

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