

*CUI BONO?*  
THE CASE FOR AN HONEST GUEST WORKER PROGRAM

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## I. INTRODUCTION

Each time President Bush has met with President Fox of Mexico over the past three years, he has promised to push his guest worker proposal giving legal status to at least eleven million illegal aliens now in our country.<sup>1</sup> Mexico has good reasons for wanting this new amnesty program enacted, but the American people have even better reasons for opposing it.

The Mexican government desperately seeks a “normalization” of its export of citizens northward and “regularization” of the status of the illegal aliens already here. However, Mexico’s main interest in this subject is not humanitarian, it is financial. In 2004, Mexicans working in the United States sent \$16.6 billion in remittances back to Mexico, a dollar injection into the Mexican economy larger than tourism.<sup>2</sup>

When President Bush met with Fox in Texas in March of 2005, he had to tell Fox some bad news—that Congress is not likely to act on his proposal.<sup>3</sup> In fact, public opinion polls consistently indicate that roughly seventy-five percent or more of Americans would oppose any new guest worker plan that includes amnesty for illegal aliens.<sup>4</sup>

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1. See, e.g., President George Bush and President Vicente Fox of Mexico, Remarks Upon Departure, The South Lawn, Press Release, Office of the White House Press Secretary, (Sept. 6, 2001) (transcript available at <http://www.whitehouse.gov/news/releases/2001/09/20010906-6.html>) (“I hope to come forward with a program that will pass the Congress, that deals with guest workers with some sense of normalization.”). See also, Mike Soraghan, *House Approves Crackdown on Illegal Immigration*, DENV. POST, Dec. 18, 2005, at A19 (stating that there are “an estimated 11 million illegal immigrants” living in the United States).

2. See Inter-American Development Bank, Remittances and Development: The Case of Mexico (June 28, 2005), available at [http://www.iadb.org/mif/v2/files/guemez\\_remitforum05.pdf](http://www.iadb.org/mif/v2/files/guemez_remitforum05.pdf) (reporting that during 2004, remittances totaled \$16.6 billion, a figure that represents an annual increase of twenty-four percent).

3. See, e.g., Press Release, Office of the White House Press Secretary, President Meets with President Fox and Prime Minister Martin (Mar. 23, 2005) (transcript available at <http://www.whitehouse.gov/news/releases/2005/03/20050323-5.html>) (“And I have told the President that we will—I will continue to push for reasonable, common-sense immigration policy with the United States Congress.”).

4. See, e.g., Jerry Seper, *Illegals Acted on Rumors of Amnesty*, WASH. TIMES, Aug. 2, 2004, at A1 (stating that “a CNN/Gallup/USA Today poll that [in Jan. 2004] said seventy-four percent of respondents thought the United States should not make it easier for illegal aliens to become U.S. citizens”); PEW RESEARCH CENTER, *EVENLY DIVIDED AND INCREASINGLY POLARIZED 27* (Nov. 2003), available at [http://www.pewtrusts.com/pdf/pew\\_research\\_values\\_110503.pdf](http://www.pewtrusts.com/pdf/pew_research_values_110503.pdf) (reporting that seventy-seven percent of Americans

Nevertheless, immigration policy—and specifically this nation’s official indifference toward illegal immigration into the country—is reaching a political and social boiling point. How we address the question posed by Samuel Huntington’s book, *Who Are We?*,<sup>5</sup> will determine the fate of America in the twenty-first century, as both a nation and a people. Immigration policy is the core of this question. Unfortunately, many of the answers coming out of Washington, D.C. do not bode well for the nation. Congress has before it numerous guest worker proposals.<sup>6</sup> Many of these are disguised amnesty programs for illegal aliens currently in the United States. The political inclination of the administration and of some in Congress is to appease the multiculturalist left and the cheap-labor business lobbyists with amnesty and continued porous borders.

A real reform to immigration policy will instead involve politically incorrect answers to the crisis at hand and, or as Senator McCain might say, real “straight talk” about who we want to be as a nation and as a people. This reform will involve three elements: the immediate securing of our borders from the flood of illegal immigrants; the persistent pressure on illegal aliens currently in the country to return to their country of origin, both through deportation and sanctions against employers who hire them; and a genuine guest worker program that brings new workers to the United States as needed—but as real guests who return to their homeland when their term of temporary employment is completed.

## II. POLITICS VERSUS POLICY IN BUSH’S PLAN

In the summer of 2005, there were statements from the White House indicating that President Bush planned to push Congress into action on his guest worker proposal.<sup>7</sup> The White House may

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believe that “we should restrict and control people coming into the country to live more than we do now”).

5. SAMUEL P. HUNTINGTON, *WHO ARE WE? THE CHALLENGES TO AMERICA’S NATIONAL IDENTITY* (2004).

6. *See, e.g.*, Comprehensive Enforcement and Immigration Reform Act, S. 1438, 109th Cong. (2005); Secure America and Orderly Immigration Act, S. 1033, 109th Cong. (2005); Agricultural Job Opportunities, Benefits, and Security Act, S. 359, 109th Cong. (2005); Border Protection, Antiterrorism, and Illegal Immigration Control Act, H.R. 4437, 109th Cong. (2005); Rural and Urban Health Care Act, H.R. 248, 109th Cong. (2005); Comprehensive Immigration Fairness Act, H.R. 257, 109th Cong. (2005); H.R. 884, 109th Cong. (2005).

7. *See* Deputy Press Secretary Trent Duffy, Press Briefing (May 20, 2005) (transcript available at <http://www.whitehouse.gov/news/releases/2005/05/20050520-4.html>)

either create a new bill of its own, or it may endorse features found in two Senate bills, one introduced by Senators Kennedy and McCain and another sponsored by Senators Kyl and Cornyn.<sup>8</sup> The White House will probably try to get an acceptable guest worker bill passed first by the Senate and then put on a full-court-press on House Republicans to support the Senate bill.

I cannot predict the outcome of that battle if the President puts the same kind of muscle behind his proposal as he did the CAFTA bill, which passed by only two votes after dozens of House Republicans had their arms twisted to the breaking point.<sup>9</sup> I do know one thing, however. If the President succeeds in his effort to enact another amnesty plan for illegal aliens, that fight will so fracture the Republican base and alienate independent voters that the Republican Party will probably lose control of the House in the 2006 elections. Furthermore, as with past amnesty plans, the tide of illegal immigration into the United States will abate only temporarily and then it will resume at prior levels.<sup>10</sup>

### III. THE POLITICAL RATIONALE FOR AMNESTY

The President and other open-borders proponents try to disguise amnesty with legalistic cosmetics and “push polls” claiming that Americans support “regularization plans.”<sup>11</sup> Such shenanigans have worked in the past, but they won’t fool citizens this time around. Amnesty is still amnesty, whether called

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(“The President is against blanket amnesty. But the President wants to see a guest worker program that matches willing workers with jobs that Americans are not interested in. He wants to see that passed by the Congress.”).

8. Comprehensive Enforcement and Immigration Reform Act, S. 1438, 109th Cong. (2005); Secure America and Orderly Immigration Act, S. 1033, 109th Cong. (2005).

9. See H.R. 3045, 109th Cong. (2005) (enacted) (passed by a vote of 217–215).

10. See, e.g., Pia M. Orrenius & Madeline Zavodny, *Do Amnesty Programs Encourage Illegal Immigration? Evidence from the Immigration Reform and Control Act (IRCA)* 12 (Fed. Res. Bank of Atlanta, Working Paper No. 19, 2001), available at <http://www.frbatlanta.org/frbatlanta/filelegacydocs/wp0119.pdf> (finding that the number of persons attempting to illegally cross the U.S.-Mexico border declined immediately following passage of the 1986 Immigration Reform and Control Act, which granted amnesty to over three million undocumented immigrants, but illegal immigration “returned to normal levels” and the amnesty program “did not change long-term patterns of illegal immigration from Mexico”).

11. See Eunice Moscoso, *Immigration fight ahead: Conservatives question Bush’s guest worker plan*, COX WASHINGTON BUREAU, Feb. 6, 2005, [http://www.ajc.com/hp/content/auto/epaper/editions/sunday/business\\_2450b8a4122970a210e0.html](http://www.ajc.com/hp/content/auto/epaper/editions/sunday/business_2450b8a4122970a210e0.html). See also Press Release, Federation for American Immigration Reform, “Push Poll” Purports to Show Support for Illegal Alien Amnesty (Aug. 21, 2001) (available at [http://www.fairus.org/site/PageServer?pagename=media\\_media3e48](http://www.fairus.org/site/PageServer?pagename=media_media3e48)).

“forgiveness,” “regularization,” or any other policy that allows people who entered the country illegally to stay here with a work permit instead of returning home and applying for a work permit from their home country.

The main argument for the President’s guest worker proposal plan in Republican circles has been that enacting his plan is needed to draw Hispanic votes into the Republican Party.<sup>12</sup> When President Bush first announced his proposal to the public on January 7, 2004, the East Room of the White House was filled with leaders of Hispanic organizations.<sup>13</sup> Although pandering has been a shameful hallmark of the White House campaign for this proposal, the President’s own campaign for re-election revealed the emptiness of this political gambit. As the *New York Times* noted in its post-election analysis, the paid advertisements used by the Bush-Cheney 2004 campaign in Hispanic radio, television, and print media did not highlight his immigration proposals.<sup>14</sup>

The President did win increased support from Hispanic voters in 2004, but he did it using the same themes that appealed to other voters—traditional moral values, empowerment through education and entrepreneurship, and steadfastness in the war on terror.<sup>15</sup>

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12. “Hispanic” has to be among the most meaningless and contrived racial categorizations ever thought up. It can mean anyone from a European Spaniard, to a Mexican or Central American of native origin, to a slave-descended African from Cuba or the Dominican Republic, to a German or Italian from Argentina or a Portuguese-descended Brazilian. One might think it is a broad generalization for Spanish-speaker, but then Brazilians would not count. In truth, “Hispanic” is, to use the post-modernist term, a completely “constructed” racial category with little ethnographic and limited cultural meaning. What we are really speaking about with illegal immigration, for the most part, is the flood of Mexican nationals, largely lower-class *campesinos* of native origin, whose opportunities in Mexico are severely restricted by a rigid class system premised ironically on racial classifications within Mexican society.

13. Press Release, White House Press Secretary, President Bush Proposes New Temporary Worker Program (Jan. 7, 2004) at <http://www.whitehouse.gov/news/releases/2004/01/20040107-3.html> (“I appreciate the members of citizen groups who have joined us today. Chairman of the Hispanic Alliance for Progress, Manny Lujan. Gil Moreno, the President and CEO of the Association for the Advancement of Mexican Americans. Roberto De Posada, the President of the Latino Coalition. And Hector Flores, the President of LULAC.”); *id.* (“I appreciate members of my Cabinet who have joined me today. . . . *El Embajador* of Mexico, Tony Garza.”).

14. See Kirk Johnson, *Hispanic Voters Declared Their Independence*, N.Y. TIMES, Nov. 9, 2004, at A3 (“The Bush campaign approached Hispanic voters exactly the way it did everybody else: by reaching out for cultural conservatives, who in this case happened to be Hispanic.”).

15. *Id.*

Polls among Hispanic voters show that a majority does not want an increase in immigration levels. In Arizona in November of 2004, exit polls showed that forty-seven percent of Hispanic voters and a majority of Hispanic Republicans supported Proposition 200, a ballot initiative to curtail illegal aliens' access to welfare benefits and tighten up identification requirements for voting.<sup>16</sup> Efforts to defeat Proposition 200 by mobilizing Hispanic voters on the basis of ethnic solidarity failed.<sup>17</sup>

This is good news for American democracy and for Hispanics as citizens, and it is bad news only for those groups that seek to divide and manipulate voters based on ethnicity and race. What it means for Republicans is that the important issues of immigration reform and border security can and must be debated on their merits as to what is good for the country as a whole, not as a bribe to some voting bloc.

#### IV. THE REAL ISSUE: TEMPORARY EMPLOYMENT VERSUS PERMANENT IMMIGRATION

There are good reasons for the widespread opposition to the President's plan within the Republican base and among independents and Democrats as well,<sup>18</sup> and business leaders and trade groups would be smart to reexamine their support for such proposals. A genuine temporary worker program need not include an amnesty for illegal aliens already in our country.

The political debate over amnesty is not merely a debate over the wisdom of rewarding lawbreakers. The debate also reflects a deep disagreement over the purposes to be served by any "guest worker" plan. Unless we can agree on the goals to be served, argument over details is pointless. A little honesty about goals and motives will go a long way in this debate.

The nation has a choice to make. We can have an honest and sensible temporary worker program to meet the legitimate needs of employers, or we can open the doors to unrestricted

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16. CNN, Ballot Measures/Arizona Proposition 200/Exit Poll, <http://www.cnn.com/ELECTION/2004/pages/results/states/AZ/1/01/epolls.0.html> (last visited Dec. 27, 2005).

17. *Id.*

18. See Gary Langer, *Unpopular Proposals: Most Oppose Bush Immigration Plan; If Created, Two-Thirds Favor Limit*, ABCNEWS.COM, Jan. 12, 2004, [http://abcnews.go.com/sections/us/WorldNewsTonight/immigration\\_poll\\_040112.html](http://abcnews.go.com/sections/us/WorldNewsTonight/immigration_poll_040112.html) ("Opposition peaks in Bush's own party: Fifty-eight percent of Republicans oppose his immigration proposal for Mexicans, compared with fifty percent of Democrats.")

immigration and all that it brings with it. We can have either a temporary worker program or unrestricted immigration, but we cannot have both. Political leaders—or those who aspire to be called leaders—need to spell out the costs and consequences of both approaches, and above all, they need be honest with citizens about what they are trying to achieve.

#### V. STANDARDS FOR A SENSIBLE PROGRAM

I believe that any honest and sensible guest worker program should meet three standards:

- First, it must truly be a plan for *temporary workers*.
- Second, there must be effective enforcement of labor laws to turn off the magnet that attracts illegal workers.
- Third, no new guest worker plan can be implemented until *after* we have secure borders.

All should be able to agree that a “guest worker” is a temporary worker in the same way a guest in your home is temporary. This seems elementary, but it is not accepted by many advocates of guest worker programs.<sup>19</sup>

If the workers allowed under a plan are not truly temporary, if they are not required to return to their home country when their term of employment expires, then the proposal is really an immigration plan masquerading as a guest worker proposal. Unfortunately, that appears to be the political agenda of many of the groups that tout “regularization” for illegal workers already here.<sup>20</sup> If it is not a program for temporary workers, then we will have unrestricted immigration from 150 low-wage countries using our six thousand miles of open borders as their

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19. See, e.g., Guest Workers: Advocates Change, Rural Migration News, [http://migration.ucdavis.edu/rmn/more.php?id=392\\_0\\_4\\_0](http://migration.ucdavis.edu/rmn/more.php?id=392_0_4_0) (reporting that many witnesses “push[ed] for a new guest worker program” at a 1999 Senate Subcommittee on Immigration hearing by suggesting “that some currently illegal workers should be legalized or receive a probationary immigration status”); Press Release, Senator Edward Kennedy, Press Conference Statement of Senator Edward M. Kennedy on Comprehensive Immigration Reform (May 12, 2005) (available at <http://kennedy.state.gov/~kennedy/statements/05/05/2005512A04.html>) (“Our bill contains an earned legalization program for immigrants.”).

20. See, e.g., Press Release, National Immigration Forum, At Year’s End, Where Are We On Comprehensive Immigration Reform? (Dec. 23, 2005) (available at <http://www.immigrationforum.org/DesktopDefault.aspx?tabid=787>) (urging Americans to stop “indulging the fiction that 11 million people already here illegally, raising families, working, and paying taxes will somehow be dislodged from jobs and leave the country,” and instead push for reform that will allow illegal immigrants to stay permanently).

de facto port of entry. That is what President Bush's plan will produce if the only standard for gaining a work permit is "match[ing] willing foreign workers with willing American employers."<sup>21</sup> In his plan, there is no limit to the number of such workers who will be admitted or the number of jobs that can be given to them.<sup>22</sup> This is why the second feature of any honest guest worker plan—enforcement—is so important. An honest plan must provide both incentives and penalties to enforce a limited term of employment.

History shows that a large percentage of individuals who come to the United States on a temporary work visa decide that they want to stay as permanent residents.<sup>23</sup> Some of them may apply for permanent status by legal means, but many may choose to stay illegally. Any realistic and workable guest worker plan must fix this gaping hole in our immigration system by making enforcement a priority. Without an effective mixture of incentives and sanctions for inducing people to return home, and locating and deporting those who do not return home, a new guest worker program for millions of new workers will fail to fix the problem of illegal entry and visa overstays.

The third necessary feature of any honest guest worker plan may be the most important: it can only be implemented after we have secure borders. This is because no matter how many temporary workers are allowed to enter our country legally, there will always be millions more who want to come.<sup>24</sup> They will

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21. See President George W. Bush, Remarks on Immigration Policy in the East Room of the White House, Press Release, White House Press Secretary, (Jan. 7, 2004) (transcript available at <http://www.whitehouse.gov/news/releases/2004/01/20040107-3.html>) ("I propose a new temporary worker program that will match willing foreign workers with willing American employers. . .").

22. See *id.*

23. See, e.g., Jean M. Johnson & Mark C. Regets, *International Mobility of Scientists and Engineers to the United States—Brain Drain or Brain Circulation?*, Nov. 10, 1998, <http://www.nsf.gov/statistics/issuebrf/sib98316.htm> (reporting that of H-1B skilled worker temporary visa holders, sixty-nine percent intend to stay, and roughly thirty-nine percent have firm plans to stay, in the United States); Jessica Vaughan, *Shortcuts to Immigration: The 'Temporary' Visa Program Is Broken*, Jan. 2003, <http://www.cis.org/articles/2003/back103.html> (sixty percent of all those who obtained permanent U.S. residency in 2001 did so not by obtaining an immigrant visa, but through an "adjustment of status," which means that they were already present in the United States, sometimes legally, sometimes not).

24. ROBERT SURO, PEW HISPANIC CENTER, ATTITUDES TOWARD IMMIGRANTS AND IMMIGRATION POLICY: SURVEYS AMONG LATINOS IN THE U.S. AND MEXICO 13 (Aug. 16, 2005), available at <http://pewhispanic.org/files/reports/52.pdf>. (fifty-two percent of Mexican adults ages eighteen to twenty-nine and forty-six percent of all Mexicans would prefer to live in the United States if given the chance).

continue to cross our open borders if we let those borders remain open. Criminals and terrorists will also be able to mingle with them in order to cross those same open borders.<sup>25</sup>

The President's proposal and similar plans that give only lip service to border security are based on the curious notion that once there is a legal way for workers to apply for a work permit, they will stop trying to come across our borders illegally. In this rosy scenario, our illegal alien crisis disappears once some workers can get a legal work permit. This could happen only if all workers who want to come are guaranteed a job and never have to go home. History provides no support for such wishful thinking.<sup>26</sup>

A recent poll within Mexico by the Pew Hispanic Center revealed that fifty-two percent of Mexican adults ages eighteen to twenty-nine and forty-six percent of all Mexicans would prefer to live in the United States if given the chance.<sup>27</sup> About twenty percent of them said they would do so even if they have to come illegally.<sup>28</sup> The message is clear: the only way to halt this exodus northward is for the United States to secure the border against illegal entry. A new temporary visa program will not stop this hemorrhage.

## VI. DECLINING WAGE LEVELS AND LOST TAX REVENUES

Economists know that there is not a fixed number of jobs to be filled by "willing workers." Employers will always find it in their self-interest to hire cheap labor when it is available. If our lax law enforcement allows it, more and more jobs will be opened to this cheap labor and more and more Americans will find themselves displaced by foreign workers who will do the job

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25. See, e.g., Heather MacDonald, *Crime & the Illegal Alien: The Fallout from Crippled Immigration Enforcement*, BACKGROUND, June 2004, at 2, <http://www.cis.org/articles/2004/back704.pdf> (noting that in Los Angeles, ninety-five percent of all outstanding warrants for homicide (which total 1,200 to 1,500) target illegal aliens, and that up to two-thirds of all fugitive felony warrants (17,000) are for illegal aliens).

26. Robert Suro, *False Migrant Claims: Fraud on a Huge Scale*, N.Y. TIMES, Nov. 12, 1989, at A1 (calling the 1986 amnesty "one of the most extensive immigration frauds ever perpetrated against the United States Government" after a program that was proposed to accommodate 250,000 workers was inundated by 1.3 million amnesty applications, the overwhelming majority of which were granted even though the Immigration and Naturalization Service estimated between 250,000 and 650,000 of the applications were fraudulent).

27. SURO, *supra* note 24, at 13.

28. *Id.*

at a lower wage with fewer benefits.<sup>29</sup> Radical libertarians and “globalists” who champion this vision need to be honest about the implications for American living standards if we allow unrestricted substitution of foreign labor for American labor.

To see where this path leads us, we need only look at what is already happening in the construction industry across the West and Midwest:

- Tens of thousands of jobs are being lost by traditional labor and small contractors because of the competition from contractors who employ illegal workers at much lower wages. Under our current no-enforcement-is-good-enforcement policy, these contractors are free to abuse the independent contractor laws to avoid paying workman’s compensation fees and withholding taxes. This allows for the possibility of tax evasion on an enormous scale.
- “Labor brokers” now move large groups of illegal workers from one job site to another without much fear of getting caught.<sup>30</sup>
- A growing number of multi-million dollar construction projects, in both the public and private sectors, are designed from the outset to use huge amounts of illegal labor. Law breaking is assumed in the architectural plans and cost estimates, with the result that contractors who do not use illegal labor are not able to bid for these projects successfully.<sup>31</sup>
- A dry wall contractor in Montrose, Colorado used to pay his legal workers twelve to fifteen dollars an hour plus overtime, but now he cannot provide those jobs because he cannot outbid the contractors who pay illegal workers only eighty dollars cash for a ten-hour day. He is going out of business because he refuses to use illegal workers,

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29. See *Evaluating a Temporary Guest Worker Program: Hearing Before the Subcomm. on Immigration and Border Control of the S. Comm. On the Judiciary*, 108th Cong. 105 (2004) (testimony of Vernon M. Briggs, Jr., Prof., Cornell Univ.) (citing U.S. COMM’N ON AGRIC. WORKERS, REPORT OF THE COMMISSION ON AGRICULTURAL WORKERS, 1992, at xix–xxxii) (stating that there is a general oversupply of farm labor nationwide due to the fact that unauthorized migrants continue to cross the southern border in large numbers).

30. Michael Riley, *Labor Brokers*, DENV. POST, Feb. 16, 2003, at A1.

31. See, e.g., Fred O. Williams, Buffalo Building Trades, *Construction police* 4–5 (June 13, 2003), <http://www.buffalotrades.com/pdf/061303%20BUFNEWS%20Construction%20police.pdf> (reporting that a company that did not use undocumented workers lost a drywall contract bid to a contractor using illegal labor).

and he knows many other small contractors in the same boat.<sup>32</sup>

- In 2003, a traffic control crew of about ten people working on a new bridge on a state highway in rural Colorado was informed by the foreman one Friday afternoon, that effective Monday, their hourly rate would be reduced to what they “pay the Mexicans.” “If you don’t like it, tough. You can quit.” They all quit. The following Monday two vans arrived from Denver with illegal workers as replacements.<sup>33</sup>

A February 2003 *Denver Post* investigative report showed that the use of labor brokers to employ illegal labor in the construction industry is widespread across the mountain states and the Midwest.<sup>34</sup> Despite this spotlight put on the problem in the two years since that report, there has not been a single arrest or prosecution of a labor broker or a general contractor in the construction industry in the state of Colorado.

The loss of jobs to illegal labor is expanding rapidly into the service sector, and it is not limited to landscape gardening, restaurants and hotels. It is also running rampant in the janitorial services industry. Millions of such service industry jobs are being lost by legal workers across the nation. It is simply a lie to say these are all “jobs Americans won’t do.” They are jobs being taken away from Americans by companies that will use cheaper illegal labor to boost their profits. The lower labor costs are seldom passed along to the consumer.

- Nationwide, the value of lost wages due to competition from cheaper immigrant labor (legal and illegal) is about \$133 billion per year according to Harvard economist George Borjas.<sup>35</sup>

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32. I have given a list of such contractors and their contact numbers to an investigative reporter at Channel 7 News in Denver, but most of these small employers ask for anonymity out of fear of retaliation.

33. This anecdote came to me from an eye witness through a friend who monitors such matters in the mountain communities around Vail. As in many such cases, the witness insisted on anonymity because of the very real fear of retaliation.

34. Riley, *supra* note 30.

35. George Borjas, Professor of Public Policy, Kennedy School of Government, Harvard University, Address at the Vail Valley Institute’s Immigration and Population Seminar (June 1997) (transcript available at <http://www.vailvalleyinstitute.org/immigration.html#Borjas>) (“If you look at two numbers from my own economic model, native workers lose approximately 1.9 percent of GDP, or \$133 billion. . .”).

- The tax revenue losses to federal, state, and local revenue coffers in this underground cash economy are very large. A 2004 Bear Stearns study estimated the amount of income tax revenue losses at \$35 billion annually.<sup>36</sup>
- The same Bear Stearns study estimates that legal workers in low-wage jobs have lost an average of four to six percent in wages annually due to depressed wage levels caused by easy availability of illegal labor.<sup>37</sup>
- The principal victims of this wage suppression are individuals at the lowest end of the job ladder—low-skilled African-Americans and legal Hispanics. It is hypocritical for any politician or any political party to claim to be offering “empowerment opportunities” in education and small business while simultaneously supporting open borders.

A recent study by the Center for Immigration Studies (CIS), a Washington, D.C. non-partisan research institute, found huge hidden costs of this growing addiction to “cheap labor.”<sup>38</sup> Households headed by illegal aliens imposed more than \$26.3 billion in costs on the federal government in 2002 and paid only \$16 billion in taxes—creating a net fiscal deficit at the federal level of almost \$10.4 billion, or about \$2,700 per illegal household.<sup>39</sup> Among the largest annual costs of illegal aliens identified by the CIS study are:

- Medicaid: \$2.5 billion.
- Medical care and treatment for the uninsured: \$2.2 billion.
- The federal prison and court systems: \$1.6 billion.
- Food assistance programs such as food stamps, WIC, and free school lunches: \$1.9 billion.<sup>40</sup>

No guest worker program will stem the flow of illegal labor or halt this replacement of American workers by cheap foreign

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36. Robert Justich & Betty Ng, *The Underground Labor Force is Rising to the Surface*, BEAR STEARNS ASSET MANAGEMENT, Jan. 3, 2005, at 2.

37. *Id.*

38. Stephen A. Camerota, *The High Cost of Cheap Labor: Illegal Immigration and the Federal Budget*, CENTER FOR IMMIGRATION STUDIES, Aug. 2004, available at <http://www.cis.org/articles/2004/fiscal.pdf>.

39. *Id.* at 5.

40. *Id.*

labor unless employers are convinced that they can no longer get away with it. This will happen only if we get serious about the enforcement of labor laws and our borders are made secure to cut off the flow. Merely allowing a greater number of legal workers will not stop the flow of illegal labor. As former Colorado Governor Richard Lamm, a Democrat, pointed out recently, cheap labor is cheap only for the employer, not for the community and not for the taxpayer.<sup>41</sup> Governor Lamm and I have been on opposite sides on many issues, but he has it exactly right in this case.

One “externality” that Governor Lamm might have in mind is the human cost of the crimes committed by illegal aliens in our communities.<sup>42</sup> About thirty percent of the inmates in federal prisons are foreign-born, many of whom are undoubtedly illegal aliens.<sup>43</sup> In California, over twenty-five percent of the inmates in the state prisons are illegal aliens.<sup>44</sup> One study estimated that ninety-five percent of all outstanding warrants for homicide in Los Angeles target illegal aliens.<sup>45</sup> But numbers alone do not tell

41. Governor Richard Lamm, *The High Cost of Cheap Labor*, FRONTPAGEMAG.COM, Apr. 5, 2005, <http://www.frontpagemag.com/Articles/ReadArticle.asp?ID=17606>.

42. Accurate national data on crimes by illegal aliens is impossible to collect because few law enforcement agencies collect that data. For a good overview of the problem, see Heather MacDonald, *Crime & the Illegal Alien*, CENTER FOR IMMIGRATION STUDIES, June 2004.

43. Federal Bureau of Prisons, U.S. Dep’t of Justice, Quick Facts about the Bureau of Prisons, <http://www.bop.gov/news/quick.jsp> (stating that 71.8% of inmates in federal prisons are U.S. citizens) (last visited Dec. 26, 2005); PAIGE M. HARRISON & ALLEN J. BECK, BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, PUB’N NO. NCJ 208801, PRISON AND JAIL INMATES AT MIDYEAR 2004, at 5 (Apr. 2005), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/pjim04.pdf> (“At midyear 2004, 34,422 Federal inmates were noncitizens, representing over 20% of all prisoners in Federal custody.”); Federation for American Immigration Reform, Criminal Aliens, [http://www.fairus.org/site/PageServer?pagename=iic\\_immigrationissuecenters0b9c](http://www.fairus.org/site/PageServer?pagename=iic_immigrationissuecenters0b9c) (“Today, criminal aliens account for over twenty-nine percent of prisoners in Federal Bureau of Prisons facilities and a higher share of all federal prison inmates.”) (citing NAT’L INSTITUTE OF CORRECTIONS, FEDERAL BUREAU OF PRISONS, June 2003); Lou Dobbs Tonight (Nov. 4, 2003) (transcript available at <http://transcripts.cnn.com/TRANSCRIPTS/0311/04/ldt.00.html>) (“One-third of the people in federal prisons are not United States citizens.”).

44. Victor Davis Hanson, *Do We Want “Mexifornia?”*, 12 CITY JOURNAL 12 (2002) (reporting that California is \$12 billion in the red [in 2002] and nearly one-quarter of its inmates are aliens from Mexico (while nearly a third of all drug-trafficking arrests involve illegal aliens).” See Phyllis Schlafly, *California Candidates Should Face the Big Issue*, TOWNHALL.COM, Sept. 8, 2003, <http://www.townhall.com/opinion/columns/phyllisschlafly/2003/09/08/168430.html> (“Almost twenty-five percent of all inmates in California prisons are from Mexico. [In his book, *Mexifornia*,] Hanson describes the young illegal aliens who vandalize, steal and deal drugs, as having this anti-U.S. attitude: ‘It’s our land anyway, not yours.’”).

45. See Heather MacDonald, *The Illegal-Alien Crime Wave*, CITY-JOURNAL.ORG, Winter 2004, [http://www.city-journal.org/html/14\\_1\\_the\\_illegal\\_alien.html](http://www.city-journal.org/html/14_1_the_illegal_alien.html) (“In Los Angeles,

the story. We need to put a human face on crime, so I will give a few examples:

- A dishwasher employed illegally by an upscale restaurant owned by the mayor of Denver is now in jail in Mexico awaiting extradition to Colorado for trial on the charge of second-degree murder of an off-duty Denver Police Officer on Mother's Day, 2005.<sup>46</sup>
- A prominent Colorado attorney was killed in a hunting accident in rural Colorado by an off-duty ranch hand. The ranch laborer was in the country illegally and fled back to Mexico to avoid capture. By all reports the shooting was an accident, but the victim would still be alive if the laborer had not been offered the job in the underground labor market.<sup>47</sup>
- A young man, thirty-two years old, was killed in Thornton, Colorado while riding his motorcycle. The illegal alien who collided with the motorcyclist was employed locally in a light manufacturing job and had six prior arrests for driving under the influence of alcohol and driving with a suspended license.<sup>48</sup>

It is easy to say that the employer in each case did not *intend* for his employee to commit any crime. He is supposedly interested only in the economic benefits of cheap labor and thus has no legal culpability for crimes committed by his illegal employees while off the job. Yet there is a legitimate question in my mind about an employer's moral culpability in cases where

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95 percent of all outstanding warrants for homicide (which total 1,200 to 1,500) target illegal aliens. Up to two-thirds of all fugitive felony warrants (17,000) are for illegal aliens.”).

46. *On Suspect's Trail*, DENV. POST June 6, 2005, at A6 (reporting that Raul Gomez-Garcia was arrested June 4 in Culiacán, Mexico, in connection with the shooting death of Denver police Detective Donald Young).

47. Nancy Lofholm, *Illegal Worker ID'd as Suspect*, DENV. POST, June 17, 2005, at A1 (reporting that “an undocumented Mexican worker was identified . . . as the suspect in the May 14 shooting death of a Qwest executive” and that the suspect was “believed to have fled to Mexico”).

48. Sarah Langbein, *Suspect Arrested in Fatal Hit-Run; Habitual Offender Fled Scene of July Accident*, ROCKY MTN. NEWS, Dec. 31, 2004, at 5A (reporting that Roberto Martinez-Ruiz was arrested for the hit-and-run accident that killed Justin Goodman and had “a record of drunken driving arrests and hit-and-run accidents”). *See also* TheDenverChannel.com, *Family of Hit-And-Run Victim Angry That Illegal Immigrant Was Never Deported* (Feb. 8, 2005), <http://www.thedenverchannel.com/7newsinvestigates/4176452/detail.html> (reporting that Martinez-Ruiz was “an illegal immigrant who used phony documents” and had prior arrests for “driving under the influence, failure to appear in court, probation violation, careless driving, driving with a revoked license, and hit and run”).

he knows he is employing illegal labor and winks at it because the laws are weak, enforcement is nil, and he knows that he can get away with it. Many employers are in this group: they know what is going on and they turn a blind eye to the lawbreaking because it improves their bottom line. I can only ask these employers to consider this question: Would they feel any differently about the matter if their own son or daughter had been the victim?

#### VII. MY PROPOSAL: AN HONEST PLAN FOR TEMPORARY WORKERS

The guest worker plan I have introduced in the 109th Congress, H.R. 3333, differs from other proposals in several ways:

- People may apply for jobs only from their home country. Those here illegally would be required to go home to apply for a work permit and be matched with a specific job.
- The term of temporary employment would be limited to not more than 365 days in any two-year period. This is because it is neither reasonable nor humane to separate people from their families for longer periods. I agree with President Bush when he says that family values do not stop at the Rio Grande. History shows when they come for longer periods and bring families, they stay.<sup>49</sup>
- A portion of earned wages, perhaps five percent, would be withheld and put into escrow to be given to the worker when he returns home.
- Guest workers would be guaranteed the same pay and benefits as any other worker doing the same job. We must end the exploitation of foreign-born workers. This is actually a difficult task to achieve in some jobs because the “prevailing wage” has been held down for so long by the availability of illegal labor.<sup>50</sup>

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49. See Claudine LoMonaco, *Cycle of Migration Broken: Illegal Immigrants Staying Longer*, TUCSON CITIZEN, June 20, 2005, available at [http://www.ccis-ucsd.org/news/tuc\\_6-20-05.pdf](http://www.ccis-ucsd.org/news/tuc_6-20-05.pdf) (observing that there are a “growing number of Mexicans who are settling permanently in the United States to keep their families together and avoid tightened border security rather than shuttling back and forth like earlier illegal migrants”).

50. See GEORGE J. BORJAS, INCREASING THE SUPPLY OF LABOR THROUGH IMMIGRATION, CENTER FOR IMMIGRATION STUDIES 1, May 2004, <http://www.cis.org/articles/2004/back504.pdf> (“Statistical analysis shows that when immigration increases the supply of

- There must be vigorous enforcement of labor laws and more severe penalties for employers who continue to employ illegal workers.
- The guest worker program would not commence until after the Department of Homeland Security and the Department of Justice have certified to Congress that our borders have been made secure against criminal trespass.

A program with these features would provide temporary workers to employers who can demonstrate a need for them. It would accomplish this without amnesty for illegal aliens and without making a mockery of our immigration laws.

The current law against employment of illegal workers lacks teeth for two reasons. First, employers need only show a “good faith” effort to verify the legal status of immigrants.<sup>51</sup> This can be accomplished by simply looking at documents presented to them. Second, the Department of Homeland Security does not enforce the current law. Fines levied against employers declined every year since 1995, and in 2004 they reached bottom: there were *only three* fines levied against employers in 2004 for hiring illegal workers.<sup>52</sup>

It is true that employers should not be required to be immigration agents—they can’t be expected to sniff out illegal workers who are using fraudulent documents that appear genuine. But there is already a simple way for employers to verify the validity of an applicant’s Social Security Number (SSN). Employers do not have to wait for the Social Security Administration to react to their withholding reports and tell them which numbers do not match the names submitted. Employers can use the existing “Social Security Number Verification Program,” which gives instant feedback to the employer via a telephone call, or the newly expanded computer-

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workers in a skill category, the earnings of native-born workers in that same category fall.”).

51. See 8 U.S.C. § 1324a(a)(3) (2000) (establishing “good faith” compliance as a defense to unlawful employment of aliens).

52. See Jim Morrill, *Demand for Illegal Workers Targeted*, CHARLOTTE OBSERVER, Aug. 26, 2005, <http://www.charlotte.com/mld/charlotte/news/12480147.htm> (“In the Carolinas, no employer has been fined in at least two years. And across the country, only three ‘notices of intent’ to fine employers were filed by immigration officials in 2004—through an estimated 7 million undocumented workers take home regular paychecks.”).

based “Basic Pilot Program,” which gives instant feedback from a federal database.<sup>53</sup>

At the present time, the SSN “Basic Pilot Program” is voluntary.<sup>54</sup> If we made using it mandatory, there would be no way for anyone to hire an illegal worker “by mistake.” Honest employers who want to obey the law should welcome this requirement, because all employers would then be competing on the same level playing field.<sup>55</sup>

Besides instant verification of a job applicant’s SSN, it would be a great help to employers if there were a counterfeit-resistant Social Security card as proposed in pending legislation. Contrary to the claims of some critics, this is not a proposal for a national identification card. It would still be only a Social Security card—nothing more. Not everyone would have to trade in their old paper cards immediately. The new cards would be implemented in stages and only be needed when someone changes jobs.

With these two changes in the law, mandated employer verification of Social Security Numbers and fraud-resistant Social Security cards, employment of illegal workers would be reduced dramatically. There would still be employers who choose to hire illegal labor and pay cash under the table, but employers who do that know they are breaking the law and we can redouble enforcement efforts against them.

Making it both easy and mandatory to verify legal eligibility for employment is one step to ending illegal employment, but another needed step is to increase the penalties for knowingly hiring illegal workers. One appropriate tool would be the tax code. We could make wages paid to illegal workers non-deductible as business expenses and make it retroactive to the date the illegal worker was first employed.

Will my plan win support in the business community over proposals promising an all-out amnesty for current illegal workers? I don’t know. It will at least offer employers a choice. Employers who can demonstrate a genuine need for foreign

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53. See U.S. Citizenship and Immigration Services, SAVE Program, <http://uscis.gov/graphics/services/save.htm> (explaining the SSN and Basic Pilot Program) (last visited Dec. 28, 2005).

54. *Id.*

55. Critics admonish that the Basic Pilot Program is hardly capable of handling a massive expansion to serve millions of employers if participation were made mandatory. Obviously, Congress must provide the added resources to upgrade the program’s capacity.

workers should support it. Employers who instead seek to exploit cheap foreign labor as a *replacement* for American workers will undoubtedly oppose it.

#### VIII. HALTING THE WAR ON AMERICAN WORKERS

The only legitimate need an employer has for a foreign temporary worker is when they have advertised those jobs at reasonable, prevailing wages for two weeks or more without success. We must not allow employers to replace American workers with lower-wage foreign workers by simply lowering the wages until only foreign workers will take the jobs. Doing that as a national policy is a declaration of war on the American working class, and as such, it is a recipe for national disaster.

The argument always heard to justify non-enforcement of our labor laws is that “they are doing jobs Americans won’t do.”<sup>56</sup> The hollowness of that argument was demonstrated recently by the Wal-Mart experience. In 2003, Wal-Mart was caught using thousands of illegal workers for janitorial services through contractors.<sup>57</sup> A civil lawsuit resulted in Wal-Mart agreeing to not only halt that illegal activity (without admitting guilt, of course), but to also set up a company training program to teach Wal-Mart managers how to recognize and avoid such contracts in the future.<sup>58</sup>

As a result of this enforcement effort, Wal-Mart now uses in-house employees for floor-cleaning janitorial duties.<sup>59</sup> Is anyone surprised that Wal-Mart was able to find and hire legal workers for all those “jobs Americans won’t do?” Is anyone surprised

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56. See, e.g., President George W. Bush, Remarks on Immigration Policy in the East Room of the White House (Jan. 7, 2005) (transcript available at <http://www.whitehouse.gov/news/releases/2004/01/20040107-3.html>) (President Bush stated that “our laws should allow willing workers to enter our country and fill jobs that Americans . . . are not filling.”).

57. See *Wal-Mart Settles Illegal Immigrant Case for \$11M*, FOXNEWS.COM, <http://www.foxnews.com/story/0,2933,150846,00.html> (last visited Dec. 27, 2005) (“Wal-Mart Stores Inc., the world’s largest retailer, escaped criminal charges when it agreed to pay \$11 million, a record fine in a civil immigration case, to end a federal probe into its use of illegal immigrants as janitors.”).

58. See *id.* (“[T]his settlement requires Wal-Mart to create an internal program to ensure future compliance with immigration laws by Wal-Mart contractors and by Wal-Mart itself . . .”).

59. See *id.* (Wal-Mart spokesperson Mona Williams said, “[n]o longer does Wal-Mart employ outside contractors to clean its floors. Companies that do contract work for other chores will have stricter rules to follow to win those contracts, and upper management will have to approve contracts of more than \$10,000. . .”).

that Wal-Mart has not been driven out of business by these “higher labor costs?”

In reality, there are very few jobs that actually require the use of temporary foreign workers, and most of them are in seasonal agricultural work. Hotels, ski resorts, restaurants, car washes, grocery stores, furniture factories, home construction, and most other employers can find legal workers if they offer decent wages and benefits.<sup>60</sup>

A May 31, 2004, cover story in *Business Week, Working. . . And Poor*, disclosed what many economists had been saying for many years. *Business Week* editors discovered that the flood of low-wage workers, coming mostly from Mexico and Central America, is throwing the least-skilled Americans into direct competition with people who will work for less.<sup>61</sup>

It is beyond dispute that illegal workers from Mexico and Central and South America are taking jobs from African-American citizens and many of Hispanic heritage. The dire effects of this competition for low-wage jobs on Hispanic citizens and legal Hispanic workers were documented by a 2004 research report from the Pew Hispanic Center.<sup>62</sup> Among the findings:

- The share of *new jobs* going to non-citizens is 28.5%, which is three times the percentage (nine percent) of the working population who are non-citizens.<sup>63</sup>
- Among the new jobs going to Hispanic workers, a higher percentage of the jobs were going to “new immigrants” than to second and third generation Hispanics. The “new immigrants” who are getting these jobs are, of course, illegal workers.<sup>64</sup>
- Thus, the majority of new employment among Hispanic workers is among illegal workers—at the expense of second and third generation Hispanic citizens.<sup>65</sup>

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60. See Michelle Conlin & Aaron Bernstein, *Working. . . And Poor*, BUSINESS WEEK, May 31, 2004 (“For one thing, globalization has thrown the least-skilled into head-on competition with people willing to work for pennies on the dollar. And a torrent of immigration, mainly poor rural Mexicans, has further swelled the low-end labor pool.”).

61. *Id.*

62. Rakesh Kochhar, *Latino Labor Report, First Quarter 2004: Wage Growth Lags Gains in Employment*, PEW HISPANIC CENTER, June 2004, available at <http://pewhispanic.org/files/reports/29.pdf>.

63. *Id.* at 17.

64. *Id.* at 3.

65. *Id.*

Economists have always known that the primary victims of this substitution of cheap foreign labor are workers at the lower end of the wage scale in unskilled and semi-skilled occupations. It is a shame that civil rights organizations and national Hispanic organizations are largely silent in this fight to protect the jobs of Hispanic and African-American citizens.

#### IX. LIBERTY UNDER LAW

One of the big bogeymen of the immigration debate is the specter of mass deportations if we begin enforcing our immigration laws. One pro-immigration report claimed the cost would be at least \$206 billion over five years to round up and deport ten million illegal workers.<sup>66</sup> That is nonsense because no one is suggesting such a massive, immediate deportation effort. We do need to arrest and deport the 450,000 aliens on the government's "Absconder's List," but mass deportations of ordinary illegal workers is unnecessary.<sup>67</sup>

If we begin enforcing our laws and give employers the tools to easily verify an applicant's immigration status, there will be a gradual decline in the practice of hiring illegal workers. No mass deportations will be needed because illegal aliens will go home voluntarily when they can no longer find jobs. When they can apply for jobs legally from their home country, travel freely, and not worry about arrest and deportation, the problem of illegal labor will diminish over time and become manageable. Our economy can and will adjust to this change in the labor pool if the changes are made gradually. Amnesty for illegal aliens is a bad idea no matter how cleverly it is disguised. We have had seven amnesties since 1986, and they only made matters worse.<sup>68</sup> Our nation already has an extremely generous legal immigration policies and very generous targeted work visa

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66. Rajeev Goyle & David A. Jaeger, *Deporting the Undocumented: A Cost Assessment*, Center for American Progress 1, July 26, 2005, available at [http://www.americanprogress.org/atf/cf/%7BE9245FE4-9A2B-43C7-A521-5D6FF2E06E03%7D/DEPORTING\\_THE\\_UNDOCUMENTED.PDF](http://www.americanprogress.org/atf/cf/%7BE9245FE4-9A2B-43C7-A521-5D6FF2E06E03%7D/DEPORTING_THE_UNDOCUMENTED.PDF).

67. See Dave Montgomery, *Growing Number of Illegal Immigrants Fleeing the Law Back Home*, MERCURYNEWS.COM, Dec. 12, 2005, <http://www.mercurynews.com/mld/mercurynews/news/politics/13388810.htm> ("ICE agents are hunting more than 450,000 immigrants who fled U.S. deportation orders . . .").

68. See U.S. Amnesties for Illegal Aliens, at <http://www.numbersusa.com/interests/amnesty.html> (last visited Dec. 1, 2005) (listing the seven U.S. amnesties for illegal aliens since 1986).

programs.<sup>69</sup> If there is genuine need for more seasonal agricultural workers, that can be accommodated without an amnesty program for more than eleven million illegal aliens.

Since 1990, we have admitted an average of over 960,000 legal immigrants each year, and in 2002 we admitted over 1.06 million.<sup>70</sup> Those people followed a legal process to enter the United States. Giving amnesty to people who entered illegally would be an insult to those millions, and it encourages continued “backdoor immigration” through abuse of temporary visa programs. Rewarding people who broke our immigration laws, whether Mexican, Brazilian, Pakistani, or any nationality, sends exactly the wrong message to foreign nationals wanting to come to America legally. Once we agree on the limits of legal immigration and provide a legal means for meeting legitimate employer needs, those limits and those laws should be enforced, not trampled under foot by the stampede of unrestricted cheap labor.

We should reward people who follow the rules, not those who break them. And yes, that applies to employers, too. Enforcing our laws is not a radical idea, it is an American idea. Why should immigration laws be the exception? We can no longer afford to wink at the employment of illegal workers, and we can no longer tolerate open borders.

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69. See, e.g., JOHN SIMANSKI, OFFICE OF IMMIGRATION STATISTICS, U.S. DEP’T OF HOMELAND SECURITY, MAPPING TRENDS IN U.S. LEGAL IMMIGRATION: 1980 TO 2003, at 2 (Sept. 2005), available at <http://uscis.gov/graphics/shared/statistics/publications/TrendsRpt1980-2004.pdf> (reporting that “[b]etween 2000 and 2003, nearly 3.7 million persons became [legal permanent residents (a foreign national who has been granted lawful permanent residence in the United States)].”

70. U.S. DEP’T OF HOMELAND SECURITY, FISCAL YEAR 2003 YEARBOOK OF IMMIGRATION STATISTICS, TABLE 1: IMMIGRATION TO THE UNITED STATES: FISCAL YEARS 1820–2003, available at <http://uscis.gov/graphics/shared/aboutus/statistics/IMM03yrbk/2003IMMtables.pdf>.