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Confused and Mean-Spirited U.S. Handling of Immigration Problems
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The United States does not have an immigration policy. Instead, a variety of activities are in train. The Department of Homeland Security (DHS) hopes to have 18,000 border patrol agents on the job by the end of this year. The department is contracting out for sophisticated technology to locate people entering the country without authorization. Work continues to complete 670 miles of fencing at the border with Mexico. Internally, DHS has activated long-unused provisions of the 1986 immigration law and is increasingly raiding workplaces to find, sometimes criminally prosecute, and then deport undocumented immigrant workers. The process is haphazard and designed to frighten undocumented immigrants already in the United States and to discourage future unauthorized entries. The data on reduced apprehensions at the border imply that the practice is working, at least in the current weak state of the U.S. economy.

DHS has not yet prosecuted many employers who “knowingly” hired undocumented workers, which is also a provision of the 1986 law, but claims that it is working on this. The department is also working on a verification system so that employers can check whether a person about to be hired has proper or falsified papers for admission into the United States. Nothing conclusive is being done to check on visa overstayers who are in the country; these “illegals” did not enter the United States without documents, but their entry authorizations have lapsed and some of them may get caught up in the raid and deport group. The overstayers are estimated to make up from 40 to 50 percent of the roughly 12 million clandestine immigrants believed to be in the United States. As a whole, they are surely better educated and more prosperous than clandestine border crossers.

Thus, rather than a comprehensive policy, DHS is largely concerning itself at the border with Mexico with about half of the persons who are in the United States illegally and with a catch-as-catch-can practice of raids of selected manufacturing facilities where there is evidence that a large group of unauthorized immigrants work. The lack of a more comprehensive policy is the fault of a federal Congress that failed to enact such legislation, and DHS is exercising its judgment of what is best for the country—*its* judgment, not necessarily that of the Congress, which should set immigration policy parameters, or of the State Department, which should play the major role among cabinet agencies in determining foreign policy. Another manifestation of the haphazard nature of U.S. immigration policy is the fact that states and municipalities enacted 240 immigration laws in 2007,

up from 84 the year before. Secretary of Commerce Carlos Gutierrez said during a press conference earlier this month that 1,562 immigration bills were introduced last year, and he commented that this is an untenable situation for the long term—he could have added for the short term as well.

DHS is now using what is largely a new wrinkle in its earlier raid-capture-and-deport technique. The agency raided a meatpacking plant in Postville, Iowa, on May 12, detained 389 immigrant workers, but then in cooperation with the Department of Justice, charged the workers under federal criminal rather than civil statutes. Within four days, 297 of the illegal immigrants pleaded guilty and were sentenced to five months of imprisonment, with immediate deportation after that. The *New York Times* journalist who reported this story, Julia Preston, noted that the immigrants, mostly from Guatemala, were told that if they did not plead guilty they would be charged with identity theft, a felony that carries a mandatory minimum two-year jail sentence. According to the report, this was the largest criminal enforcement operation ever carried out by immigration authorities.

The new process is raid-capture-imprison-deport, and while this undoubtedly is legal under the 1986 act, there are problems at each step. When the Immigration and Reform and Control Act was passed in 1986, the inherent bargain had two elements: legalize unauthorized workers who had lived in the United States for a number of years; and to avoid a new buildup of clandestine entries, impose penalties on employers who knowingly hired workers not legally in the United States. (The workers imprisoned after the Iowa raid apparently had no prior criminal record.) But then the Congress refused to specify a way that employers could know with any assurance that the workers they were hiring were properly in the United States. This gave employers deniability. This was also an implicit invitation for workers without authorization to come to work in the United States. The executive branch, on its part, paid practically no attention to the employer-penalty provision, almost surely to avoid angering an important domestic constituency. Now, 20 years later, after a much bigger buildup of undocumented immigrants than existed before the 1986 legislation, the executive branch is reacting—reacting against workers trying to earn a living but not against employers who want the cheap labor. The workers are illegally in the United States, but their motives are not criminal. Their crime is that they accepted actual and implicit invitations to enter the United States

without authorization. There are many unsavory aspects to what is taking place.

One of these is that deportation of unauthorized immigrants frequently poses a hard decision about what to do about what may be hundreds of thousand of children of deportees who are U.S. citizens by reason of birth in the United States. The following is how DHS Secretary Michael Chertoff dealt with a reporter's question on this subject at the June joint press conference with Secretary Gutierrez: "...we try to deal with the issue of arresting people in a way to make sure children are not left unattended. We recognize when people are deported they're likely to take their young children with them, even though they're American citizens. But we cannot allow the fact that someone who has a child who's an American citizen to create a de facto immunity from the law." Many of the deported unauthorized immigrants also have spouses who are U.S. citizens.

The U.S. House of Representatives, mostly because of the opposition of conservative Republicans, refused to consider some form of legalization or regularization of the estimated 12 million clandestine immigrants in the United States despite President Bush's request that they do so. They opposed "amnesty" for people who violated U.S. law. One U.S. think tank that follows immigration issues argued that without legalization, those here without authorization will gradually depart or die. That is a recommendation for limbo instead of amnesty for 12 million people and their families. This is a harsh policy that exhibits no compassion. The next Congress is expected to propose comprehensive immigration legislation that would contain a combination of regularization for the unauthorized millions combined with a large temporary worker program. If the Democrats increase their majority in both houses of the Congress, and win the presidency as well, then comprehensive immigration legislation along the foregoing lines has a good chance of success. Under these circumstances, the U.S. government will pursue the raid-capture-imprison-deport policy until the next administration, after which this practice is apt to become inoperative. Why is the United States following this harsh and temporary game of chance?

There has been little discussion thus far of immigration in the campaigns of the two presidential candidates. Senator John McCain, who is on record as supporting comprehensive immigration legislation that includes the regularization/enhanced temporary worker combination, has little incentive to reiterate this position in the face of opposition of that important portion of the Republican Party whose support he needs to win the presidency. Senator Barack Obama has largely been silent on the issue out of fear about how his position will play among blue-collar workers, but he may become more vocal to build support with Hispanic voters. However, even if the candidates prefer not to debate the immigration issue during the campaign, this practice will be hard to maintain if reporters and the public are able to question the two candidates during debates. Immigration is too important an issue for the next president to neglect.

I realize that many of the sentiments expressed in this discussion are naïve. I probably should expect the domestic political process

to favor voters with financial clout—builders over construction workers, farmers who want low-cost workers over the workers themselves, restaurant owners over short-order cooks and busboys—over impoverished workers and their families even if both groups break the law. It does not surprise me that the U.S. government itself deliberately ignored the law for some 20 years until the current administration came into an electoral season and suddenly became an ardent supporter of selectively punishing illegality by mounting disruptive raids. After all, unauthorized parents being deported do have the option of taking their U.S. citizen children with them to their home country even if the children have lived all their lives in the United States. Imprisoning unauthorized workers does send a strong message to future unauthorized migrants to stay home, even if this marks them as criminals for the rest of their lives.

Well, so be it—I am distressed by the lack of compassion being shown by the U.S. government. If the 1986 legislation had been followed immediately, not 20 years after the fact, there would be fewer U.S. citizen children of clandestine immigrants today. I accept that sovereignty does demand that the United States have control over who can come into the country, but punishing unauthorized immigrants recruited directly or indirectly by U.S. employers for accepting this invitation is distressing. The Guatemalans captured in Iowa were not sentenced for working without papers but for using falsified documents. Encouraging them to practice identity theft was built right into the 1986 law by the failure to have a more secure identification document to verify their status when employers hired them. Where I come out is that the United States does need a new, comprehensive immigration law that better serves the common good—of the immigrants, their employers, and competing workers—and that encourages U.S. citizens to respect the fairness of their system of justice.

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