

NILC REFLECTIONS ON PRESIDENT BUSH'S IMMIGRATION REFORM PROPOSAL: A COMPELLING VISION BUT A SERIOUSLY FLAWED PROPOSAL

January 9, 2004

“As a nation that values immigration, and depends on immigration, we should have immigration laws that work and make us proud. Yet today we do not. Instead, we see many employers turning to the illegal labor market. We see millions of hard-working men and women condemned to fear and insecurity in a massive, undocumented economy. Illegal entry across our borders makes more difficult the urgent task of securing the homeland. The system is not working. Our nation needs an immigration system that serves the American economy, and reflects the American Dream.”

President Bush, January 7, 2004

The National Immigration Law Center is encouraged by the fact that the President has decided to address the need for comprehensive immigration reform, and we welcome the sweep of his rhetoric. Sadly, the proposal he has outlined is fatally flawed because it fails to live up to the vision he expressed so eloquently. The question, now, is whether his administration will work with Congress to pass legislation that comports with that broad vision. It is nearly impossible to conceive of comprehensive immigration legislation being enacted during this election year. Therefore, in the short run, the best indicator of the President's intentions is whether he presses for immediate passage of focused proposals such as the DREAM Act that would make positive changes consistent with his expressed values. We believe that the President's speech makes it more likely that these interim initiatives will be enacted this year.

(1) A COMPELLING VISION

We strongly agree with the President and most Americans that the status quo is unacceptable, major reform is needed, and any such reform must provide legal status for those already here and working in some of America's most arduous and lowest paid jobs as janitors, meatpackers, garment workers, farmworkers, etc.

The President's renewed attention to the issue confirms our belief that there is an unstoppable momentum towards comprehensive immigration reform and legalization of currently undocumented workers. This momentum is based on our economic needs, the reality of a shrinking world and increased trade, demographic change, increased civic participation by immigrants, and the inherently undemocratic and unstable situation set up by our current unworkable system. The only question is the pace and nature of the reforms to come.



National
Immigration
Law Center
www.nilc.org

NATIONAL IMMIGRATION LAW CENTER

Los Angeles Headquarters
3435 Wilshire Blvd
Suite 2850
Los Angeles, CA 90010
213 639-3900
213 639-3911 fax

Washington, DC
1101 14th Street, NW
Suite 410
Washington, DC 20005
202 216-0261
202 216-0266 fax

Oakland, CA
405 14th Street
Suite 1400
Oakland, CA 94612
510 663-8282
510 663-2028

The inclusive rhetoric employed by the President to describe the struggles of undocumented immigrants is important and helpful. For example, we very much appreciate and agree with the following sentiments about undocumented immigrants from his statement:

“Their search for a better life is one of the most basic desires of human beings. Many undocumented workers have walked mile after mile, through the heat of the day and the cold of the night. Some have risked their lives in dangerous desert border crossings, or entrusted their lives to the brutal rings of heartless human smugglers. Workers who seek only to earn a living end up in the shadows of American life -- fearful, often abused and exploited. When they are victimized by crime, they are afraid to call the police, or seek recourse in the legal system. They are cut off from their families far away, fearing if they leave our country to visit relatives back home, they might never be able to return to their jobs.

“The situation I described is wrong. It is not the American way. Out of common sense and fairness, our laws should allow willing workers to enter our country and fill jobs that Americans have are not filling. (Applause.) We must make our immigration laws more rational, and more humane. And I believe we can do so without jeopardizing the livelihoods of American citizens.”

The complete statement is available on line at
<http://www.whitehouse.gov/news/releases/2004/01/20040107-3.html>

(2) A FATALLY FLAWED PROPOSAL

The basic elements of the proposal as we understand it are as follows:

- a. A new guestworker program would be created with some of the following features:
 - i. All undocumented immigrants in the U.S. would be eligible for a temporary nonimmigrant visa if currently employed and sponsored by their current employers;
 - ii. Also eligible would be persons who are currently abroad who have job offers in the U.S. from employers if the employers have tried and failed to fill the position with domestic workers;
 - iii. The guestworkers would be able to stay in the U.S. legally for up to 3 years if they remain employed with the original or another employer;
 - iv. During the 3 year period, the guestworkers would be able to travel freely between the U.S. and their homelands;
 - v. Spouses and minor children of the guestworkers would be able to live in the U.S. with the worker, but would not be authorized to work legally unless they participate in the guestworker program in their own right.
 - vi. The 3-year period would be renewable for an unspecified number of terms, but not indefinitely.

- vii. Guestworkers would be eligible to apply for permanent status, but only if they qualify under the current system (i.e., there are no provisions to permit guestworkers to obtain legal status once the temporary period runs out).
- b. Permanent legal immigration numbers would be increased, although the degree and nature of the increase is unspecified
- c. There would be increased workplace and other enforcement of immigration laws, including use of biometrics, without specifics other than that the President is not calling for institution of a national ID.
- d. Employees would be required to report any guestworkers they hire under the program, as well as those who leave their employment, so that the government can monitor workers and deport those who lose employment.
- e. Temporary workers would be given the option to put earnings into “preferred tax” accounts that can be drawn down in countries of origin.
- f. The President will negotiate social security “totalization agreements” with new countries (these agreements, currently in place for about 20 countries, permit pooling of social security earnings from both countries so that workers are not penalized for time spent abroad... The U.S. and Mexico are currently in the process of negotiating such an agreement).

This proposal lacks the details necessary for a fully comprehensive analysis, but these are a few of its flaws:

- a. **No path to citizenship:** Immigrants will be unlikely to participate in a program they perceive as an immigration enforcement trap that could leave them in a worse position at the end of their temporary residence period (a reasonable fear under the proposal as outlined because it includes no path to citizenship and at the end participants would be even more vulnerable to deportation).
- b. **Too much bureaucracy:** Such a huge guestworker program is bureaucratically unworkable, because it would require constant monitoring of the employment status of millions of highly transient workers.
- c. **Problems with guestworker programs:** Guestworker programs such as the Bracero program have a terrible history of abuse and misuse and the proposal does not provide sufficient protections to address the inherent problems. For example, workers under the proposal could face deportation if they are laid off or fired, and those who assert their rights would be at the mercy of employers who threaten to do so or who simply fail to cooperate in the guestworker paperwork requirements. Complaining workers could also be blacklisted within their industry, making it difficult for workers to carry their status with them to another employer. The Administration’s proposal would extend beyond agriculture to all other sectors, magnifying these problems.

- d. **Inadequate worker protections:** The proposal's call for increased workplace immigration enforcement is likely to be counterproductive to the President's goal of encouraging workers to come forward to report instances of labor abuse. Employer sanctions, raids, and similar efforts have proven ineffective for immigration control. Rather, such measures make workers more vulnerable to employers and therefore more exploitable. Although the President's proposal would provide the guestworkers with the same rights as others, they would often be too vulnerable to assert these rights.
- e. **Not comprehensive:** If it is to win acceptance and succeed in the long term, a comprehensive immigration proposal must make provision for the integration of immigrants into our social and economic fabric, including language acquisition, health care and other basic needs, economic development, and impact assistance for states and local governments. Similarly, today's problems are likely to recur unless reforms are made to permit immigrants to re-unite with close family members without waiting an intolerable amount of time.

(3) OPPORTUNITIES FOR MEANINGFUL REFORM THIS YEAR

It is almost certain that nothing as sweeping as the President's proposal will pass Congress in this election year. But the DREAM Act (S 1545, HR 1684) and the AgJobs proposal (S 1645, HR 3142) are bipartisan bills with majority support in the Congress that address the same problem the President has identified and that are consistent with his broad principles.

- o **The DREAM Act** (or Student Adjustment Act in the House), responds to a tragedy faced by young adults who were brought to the United States years ago as undocumented children, and who have grown up here, but who are currently precluded from applying for the legal status they need to finish school, work and fully contribute to our nation.
- o **The AgJOBS bill** is designed to modernize our nation's failed agriculture immigration policies so that the vast majority of tomorrow's farmworkers can be legal workers.

With the President's support, these bills can pass quickly.

Other important pending legislation could pass this year with the President's support, including repeal of the U.S. Supreme court decision in Hoffman Plastic that made it easier for employers to exploit undocumented workers (and therefore also easier to exploit all workers) and efforts to eliminate bars that prevent immigrants from obtaining basic health care and other public benefits supported by their own taxes.

The best test of whether the President is merely playing politics with immigrants or sincerely wants to make a difference will be whether he works for passage of these concrete improvements.

For more information contact :

Josh Bernstein 202-216-0261, bernstein@nilc-dc.org or
Marielena Hincapié 510-663-8282, hincapie@nilc.org