AMNESTY: OVERPOPULATION BY FIAT

By

David Simcox

SUMMARY

Political and diplomatic promises made by both parties make it likely that the Bush White House and the new 108th Congress, despite public opposition, will take up the nagging issue of amnesty for as many as six million illegal immigrants before the 2004 national elections. Amnesty, as now envisioned by both parties, has the potential over the next decade and a half to endow as many as forty million persons abroad with family preference entitlements for immigration to the US. The higher fertility of these added legal residents and their families, and the resulting millions of new migration chains have the potential to accelerate America’s population growth to the “highest” and, until now, “least likely” level projected by the Census Bureau. Immigration-fed population momentum could produce a US population of 550 million by mid-century, reaching the one billion mark in the 2080s.

The nation’s experience with amnesties, as with the sweeping liberalization of immigration of 1965, shows that the numbers ultimately admitted will be considerably higher than political leaders will acknowledge. Overruns are built into the process. Inherent in amnesties have been high fraud and lax adjudication, intent-altering court decisions, stimulation of added legal and illegal immigration, and the piecemeal “creep” of amnesty to ineligible groups.

The Bush administration’s offer of “earned legalization” for some 3.5 million Mexican illegals counts on Mexico’s cooperation in discouraging future illegal immigration. But the Mexicans have ruled out blocking the outflow of their own people and are stymied by internal corruption from effective cooperation against smuggling and trafficking. North of the border, US low-wage employers are unlikely to end their preference for plentiful and compliant illegal alien workers.

Amnesties have no place in effective immigration control. A workable alternative is first to stop any further growth of the illegal population by tighter border and visa controls. Stepping up deportations from around 180,000 a year to at least 250,000 would stimulate more voluntary departures and could reduce the unreplenished illegal population by as much as 4.0 million over a decade.

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Sometime after the seating of the 108th Congress in early 2003, Capitol Hill and the White House will set about in their confounding way to make a truly epochal decision of population policy — whether to legalize the presence in the US of upwards of 6 million unlawful immigrants and their families. This amnesty, along with the related immigration changes now under consideration by both major political parties, such as guest worker programs and expedited family reunification, could lock in millions of current illegal immigrants and add tens of millions of new residents and their US-born children to this country over the next decade and a half.

The portentous choices to be made on amnesty are already being rationalized as matters of national security, economic development, civil rights or human rights. They are not discussed or even acknowledged as matters of population policy. Washington’s population policy now as most often in the past is simply “More.” And its outlook in the charged political ambiance can be summed up as “immigration is pork.”

Scornful of limits and absorbed in the short term view, America’s political leaders have historically made fateful demographic decisions with little consideration for the future consequences of the growth, composition and distribution of the population for society and the environment. Reminiscent of what was once
said of Britain’s acquisition of an empire, the US has put itself on track to a one-half billion population “in a fit of absent-mindedness.”

The “Grand Bargain” — Blessing the Flow from Mexico

Since taking power, the Bush administration, utterly pro-business and pro-populationist, has leaned toward a package deal with Mexico that would amnesty illegal Mexican aliens putatively here at least five years. Since public opinion remains hostile to “amnesties,” the administration would rename it “earned legalization” and create a “temporary worker” status for working illegal aliens as a transition to full legal residence. Washington would also increase regular Mexican immigration ceilings to allow reunification of families originally divided by acts of illegal immigration. This package deal — called the “grand bargain” by US and Mexican negotiators — may also include Mexican commitments to restrain illegal immigration from or through its territory.¹

These proposed concessions to Mexico have won considerable interest group support in the US from business, the once immigration-shy labor movement, the churches and ethnic lobbies. Bush’s own personal interest and his desire to placate Mexican President Vicente Fox have given the deal impetus. The September 11 attacks soured the general public’s receptiveness to major immigration initiatives. Even so, mindful of the GOP’s need for Latino votes, Bush has remained supportive of an immigration deal of some sort. Some observers prematurely declared the grand bargain dead after September 11.² More likely it will lie comatose until 2003.

If the 2002 elections produce turnout for the GOP that promises the party more success among Latinos in 2004, the Bush administration would be encouraged to press ahead for the immigration deal, particularly if job growth picks up. While Bush has focussed only on Mexicans in the US, he has not ruled out extending amnesty to other nationalities.

Democrats Up the Bidding

According to House Democratic minority leader Richard Gephardt, his party favors an “earned” amnesty for all illegal aliens of any nationality with at least five years in the country — an estimated 5.8 million people.³ Gephardt tossed off this massive, nation-transforming proposal with no more solemnity than if he were announcing a new bridge for his Missouri congressional district. Senate Democratic leader Tom Daschle has echoed his zeal.

In October, 2002, Gephardt followed up on his pledge by introducing HR 5600, the “Earned Legalization and Family Reunification Act of 2002.” The bill came out early enough to improve Democratic chances in the then impending November 5 elections, but too late to get serious consideration by the lame duck 107th Congress. The Democratic bill would grant legal residence to those here five-years and who have worked at least two years, unless they were not of working age. Spouses and children of eligible aliens would be admitted.

The bill would further expand the numbers by offering permanent residence to legal temporary sojourners, such as those in parole, deferred departure and temporary protected status, and to undocumented students in grades seven through college. Applicants must pay all taxes owed (IOUs are acceptable) and have “minimal” understanding of English and the history and government of the US. To ensure their prompt entry on the voter rolls, satisfaction of the “minimal” understanding requirement will be considered as satisfying a similar requirement for naturalization.

Buoyed by its success in marginalizing the Republican party in California by recruiting immigrants, the Democratic party now accepts high immigration as its default position. A large turnout for Democrats among Latinos and the foreign-born in November 2002 will increase the appeal of a broad amnesty before the 2004 presidential elections.

How Many Eligible from Mexico? From the World?

Best estimates are that under what is known of the Bush proposal as many as 3.5 million Mexican illegal aliens would meet the five-year presence requirement.⁴ No specific numbers have been proposed for increasing Mexico’s regular immigration quota, already the world’s highest with an average of some 150,000 a year in the late 1990s. Neither have negotiators yet
specified any target numbers for guest workers, or whether they contemplate recruiting additional guest workers now living in Mexico. The agriculture, construction and restaurant lobbies are pressing for such an arrangement.

With polls consistently showing most Americans opposed to increased immigration, it is not surprising that both parties are vague about how many new residents their plans would bring. The Administration and the Democrats have emphasized “earned legalization” as promoting the values of family reunification, fairness and compassion, along with the nation’s presumed need for the additional workers. Curiously, employment while in illegal status will be considered as a meritorious concession to the country rather than a violation of law still on the books.

In defending “earned” legalization, proponents try to reassure the public by claiming that the number of new immigrants will not be large, since those to be legalized are “already here, and they are not going home.” Similarly, public concerns about guest workers and higher immigration quotas are often dismissed with such fatalistic contentions as “they’ll come anyhow, so it’s better if they come legally.” A related argument tailored for post September 11 anxieties and used by US and Mexican proponents alike is that the mass legalizations will enhance national security by bringing the illegal population into the light of day where it can be identified and counted. Such Washington disingenuousness on the real population effects of major immigration liberalizations, such as past amnesties and the 1965 law easing the quota system, is traditional.

The Amnesty “Echo:” New and Bigger Migration Chains

The current arguments are no less disingenuous and manipulative. Experience with amnesties shows that all concessions in the “grand bargain” so far considered will end up importing more migrants than acknowledged. Those concessions and incentives are likely as well to reduce the repatriation rate of the illegal population already here and stimulate added legal and illegal immigration at the outset and well into the future. The Democrats’ amnesty bill offering permanent residence even to adult college students and legal sojourners shows how easily such legislation can abandon its original intent and become a migration “Christmas tree.”

A substantial literature on the late 1980s’ general and farm worker amnesties of 1.7 million and 1.1 million illegal aliens respectively shows the potential for immense follow-on immigration of relatives and friends of the amnestied population. A study done for the US Commission on Immigration Reform (USCIR — the Jordan Commission) studied 1.58 million of those beneficiaries and concluded that they had 8.0 million relatives living abroad who would become eligible for a US immigration benefit — 5.2 overseas relatives per amnestied alien. This discussion assumes the same 5.2 to 1 ratio for the 1.2 million amnestied persons not addressed in the USCIR report. That report, based on a 1992 Immigration and Naturalization Service survey of the legalized population, estimated that about 25 to 30 percent of overseas relatives (2.0 to 2.5 million) would immigrate.

However, a subsequent interpretation of the 1992 legalization data done by the author of the USCIR report upped the estimate of the number of relatives abroad of the 1.58 million amnestied aliens to 9.6 million, 20 percent more than the number estimated for the USCIR report.

Note that the large retinues of entitled relatives estimated in these studies were for a relatively small anchor population of legalized aliens compared to the current prospects. The Mexican undocumented population alone now eligible under a five-year residency rule is estimated at 5.5 million. Using the ratios implied by the 1994 USCIR report, they would have some 18.2 million relatives abroad. Applying USCIR’s restrained estimates, “only” about 30 percent (about 5.5 million), would use their family reunification preference to come here.

Proponents of amnesty dismiss such concerns with the claim that much of the prospective family immigration is limited by quotas that tightly limit annual admissions. So, most eligibles would wait for years to cash in their family preferences. It is precisely that long wait for what is seen as a US commitment that encourages illegal immigration and boosts pressures for amnesties and other circumvent ions of the waiting period. Also, many overseas relatives would become legally eligible to
come with little delay once the legalized alien sponsor gains citizenship.

Data from Mexico on Family Chains

Another assessment of the family immigration liability attending the amnesties of the 1980s, done by American scholar Douglas Massey and Mexican expert Jorge Durand, and based on surveys in Mexico, supported similar conclusions. It found that each of the 2.3 million Mexican legalized in the late 1980s’ had an average of four relatives who qualified for a preference, thus creating 9.2 million additional immigration entitlements.

Massey and Durand also highlight the multiplying effect that naturalization of the legalized aliens, and the resulting removals of limits on the numbers of certain relatives would have on future immigration. They conclude that the IRCA amnesty and the subsequent naturalizations of Mexican aliens induced by US policy through 1998 had created 11.5 million potential new immigrants subject to numerical limits and another 10.5 million subject to no limits at all.9

Worth noting is that these large numbers grew from a root population of only 2.3 million amnestyed Mexicans.

If, however, as the Democrats prefer, all illegals and some legal temporary sojourners residing for five years become eligible regardless of nationality, the projected numbers jump smartly. The amnesty-eligible population in the US rises to 5.8 million, with more than 35 million relatives abroad. Even if only 30 percent of them actually immigrates, the US would still receive 10.5 million more newcomer relatives in a few years to join the nearly six million newly legalized in this country — adding up to 16.5 million newcomers able to petition to start their own family chains.

Under Massey and Durand’s reckoning, and assuming naturalization rates comparable to the earlier amnesty, a Democratic party-style amnesty would ultimately create quota-limited immigration entitlements for 29 million persons abroad and unrestricted immigration privileges for more than 26 million. There is some overlap between the quota-limited and unrestricted family populations. Naturalization of the anchor immigrant moves some overseas relatives from quota-limited categories to unrestricted ones, while creating new eligibilities for siblings. Even so, the size of the potential worldwide immigration liability is mind-numbing.

The following table presents 1) estimates of preference-eligible family members abroad per legalized alien derived from three studies of the 1987-90 amnesties: Woodrow 1995, USCIR, and Massey/Durand; and 2) the estimates of the total number of family members abroad who would become eligible for family preference visas under the three scenarios in a Mexico-only amnesty and a worldwide amnesty.

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<td>Overseas Relatives Per Alien Amnestied Under 1986 IRCA</td>
<td>6.1</td>
<td>5.2</td>
<td>4.0</td>
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<tr>
<td>Estimated Eligibles for Amnesty under 5-Yr Residence Rule – Mexico Only</td>
<td>3.5 million</td>
<td>3.5 million</td>
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<tr>
<td>Total Eligible for Family Visa – Mexico Only</td>
<td>21.35 million</td>
<td>18.2 million</td>
<td>14.0 million</td>
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<td>Estimated Eligibles For Amnesty – 5 yrs Worldwide</td>
<td>5.8 million</td>
<td>5.8 million</td>
<td>5.8 million</td>
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<tr>
<td>Total Eligible for Family Visa – Worldwide</td>
<td>35.4 million</td>
<td>30.2 million</td>
<td>23.2 million</td>
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<tr>
<td>Total Worldwide: Legalized + Family</td>
<td>41.2 million</td>
<td>36.0 million</td>
<td>29.0 million</td>
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Even these formidable numbers may understatede the prospects. The studies cited above are based largely on the demographics of migration from Mexico, where population growth is slowing and immigration demand has been somewhat attenuated. What can be expected in follow-on immigration from the 1.8 million amnesty candidates who are non-Mexican? Many illegal aliens are from nations such as China, India, Pakistan and Bangladesh, where populations are huge and immigration demand explosive.

Neither does the table estimate added illegal immigration, which increased measurably because of the 1986 amnesty. Massey and others concluded from the Mexican surveys in 1997 that

...Being in a household in which someone had been legalized under IRCA (the 1986 Amnesty statute) increased the likelihood of migrating illegally by a factor of almost nine, raising it from .04 per year to .35 per year.  

A heavy share of those household members determined by Massey to be more likely to migrate illegally are spouses and minor children of the newly legalized aliens. This illustrates another trap of the amnesty concept — the subsequent pressure to expand and extend privileges to presumed hardship groups, and the growth of those hardship groups through marriage and childbirth. The USCIR study showed that in 1992 — four years after the amnesty and after a considerable number of “family fairness” admissions — the 1.58 million amnesty-stated Mexican aliens studied still had 484,000 spouses and children abroad who intended to come, implying a total immediate family population in waiting of 850,000 in just Mexico.

The Family Unity Compulsion and “Amnesty Creep”

Masses of ineligible family members become poster children for special exceptions and, ultimately, demands for new amnesties. Their ineligibility to legally join their family member in the US because of quota limits was deplored by humanitarian groups and resulted in legal and ad hoc administrative measures to let them come anyway. Among those measures were 120,000 additional quota numbers under “family fairness,” and de facto acquiescence in considerable illegal presence. Since 1994 there has been 245 (i), a provision granting legal permanent residence on payment of $1000 to hundreds of thousands of illegals here awaiting approval of family or employer petitions (8USC1255(i)(I)). As often the case, 245 (i) originated as a time-limited special relief measure, but has become a de facto rolling amnesty of its own with repeated extensions. INS likes the extra money and Congress likes the patronage.

A downstream population effect of “amnesty creep” has been the spiraling rise in post-amnesty legal immigration of Mexicans from 90 thousand yearly in 1995 to 207 thousand in 2001. More than two-thirds of 2001 Mexican immigrants — 20 percent of all US legal immigration — were family sponsored and about two-thirds were already living in the United States.

Unlike in the 1986 amnesty, the present lawmakers would simply capitulate in advance to the sanctity of family reunification. They would provide for otherwise ineligible immediate family members by adding more quota numbers for family reunification or, in the generosity of the Democrats’ HR 5600, grant virtually automatic legalization to spouses and children of applicants.

Amnesty Fraud — Risky Population Wild Card

America could expect up to 35 million additional immigrants over a decade and a half if all features of the proposed amnesties were enacted. But this estimate rests on optimistic assumptions — that the amnesty would have unambiguous and politically-backed rules, would be rigorously adjudicated and reasonably fraud-free, and would not be expanded or liberalized by court decisions. Our previous amnesty experiences suggest that these outcomes are most unlikely.

Fraud abounds in all US government immigration benefit programs, where time-short adjudicators must deal with dubious foreign documents, often counterfeit or altered US documents, and the vestigial identity of petitioners and beneficiaries. INS is hampered in fighting fraud by waveringsupport from Congress and the White House, chronically shortages of manpower and time, and an awareness that denials of applicants are more politically and judicially risky than rubber-stamp approval. A 2002 General Accounting Office report finds that 20 percent to 30 percent of applications for
benefits in some places are fraudulent. In one desirable visa category, an examination of a sample of 5000 applications found that 90 percent were fraudulent.\textsuperscript{11}

Mexico’s own culture of corruption will plague administration of legalization and guest worker programs. A Mexico-only amnesty would make “proofs” of Mexican identity and presence in the US highly valuable commodities throughout Latin America. The Mexican bureaucracy will be hard pressed to resist this opportunity for quick and easy enrichment. Flourishing private immigration document counterfeiters in the US and abroad are also likely to equip clients with Mexican documentation. Already demand for counterfeit Mexican birth certificates is rising because of the increasing number of US jurisdictions and businesses willing to honor ID cards issued by Mexican consulates. Without the most exacting scrutiny — which a swamped INS is unable to give — a Mexico-only amnesty could yield substantial numbers of non-Mexican newcomers.

About half of the successful applications for amnesty in the 1986 Special Agricultural Workers (SAW) legalization in California were fraudulent, allowing in up to one-half million ineligible aliens.\textsuperscript{12} It is hardly surprising that the 1986 amnesties were fraud-ridden and lenient. The primary vetting of applications was done largely by “Qualified Designated Entities (QDE’s)” — non-governmental civic, religious and ethnic volunteer groups that openly favored “generosity.”

Mushy legal language and regulations and some court decisions created presumptions in favor of the applicants or otherwise eased the rules. That legal battle continues. Various court rulings since the IRCA amnesty, culminating in a 1993 Supreme Court decision (\textit{Reno v. Catholic Social Services, Inc. 509 US 43}) have overturned INS amnesty rules and opened the way for legalization of up to 350,000 more illegal residents previously denied. In another display of “amnesty creep,” the 2000 “LIFE” Act legislated relief for the appellants and other ineligible family members.\textsuperscript{13}

With INS manpower now heavily committed to border security, the country will likely have to again place adjudication of millions of legalization requests in the hands of QDE’s. Congress’ continuing ambivalence about immigration is likely to produce legislative ambiguities on eligibility, putting key policy decisions again in the hands of sympathetic private screeners or judges bent on “fairness.”

\textbf{“Nothing is so Permanent as a Temporary Worker”}

Farm interests, seasonal employers, and their congressional tribunes want the “grand bargain” to include a guest worker program that will not lead to permanent residence. Past experience in the US and Europe with “braceros” and other temporary worker programs hold out little hope that this is doable.

The pull of life in the US is too strong and the opportunities for better jobs as a longstayer are seductive. Spouses and children acquired while in the US will remain a powerful fixative. And the US is unlikely to police labor standards enough to ensure employers meet the terms of their guest workers’ contracts.

The likely continued availability to employers of more compliant illegal immigrants will undermine guest worker labor standards. Effective management of a guest worker program would demand effective use of employer sanctions, which have become a dead letter. The risk is high that a guest worker program will rapidly become a conduit for permanent settlement in the US, with regular intake from Mexico or other sending countries and little return flow.

\textbf{Little Mexican Reciprocity in the “Grand Bargain”}

What the United States seemingly hopes to gain from these sweeping agreements is, in the President’s words, immigration that is “orderly, safe, humane and legal.” and Mexico’s cooperation in bringing it about. But so far in the negotiations, Mexico’s prospective concessions to make the immigration agreement work have been timid and shifting. Early on, Mexican Interior Minister Santiago Creel made it clear that there would be no efforts to restrict Mexicans’ movements, as it would supposedly violate Mexico’s constitution.\textsuperscript{14}

Thus, the one Mexican concession that would have brought balance to the “grand bargain” is not even on the table. Instead, there are Mexican promises to discourage emigration by cracking down on the pervasive alien-smuggling industry and curbing the flow of transiting migrants from Central America. Also mentioned
have been possible Mexican incentives to ensure guest workers comply with the terms of their admission. Results from previously agreed cooperative efforts against smugglers, document forgers, and transiting third-country aliens have been unspectacular.

Expert US analysts of Mexico are skeptical that the Mexican government can deliver even on these modest deterrents. Robert Leiken, a Brookings Institution scholar, says President Fox’s good intentions would be defeated “...at the street level because the culture in law enforcement circles is so corrupt.” DeLal Baer of Washington’s Center for Strategic and International Studies, warned that cooperation against smuggling runs up against the same obstacles that have undercut US-Mexican cooperation on environmental protection and curbing the drug trade.15

On the US side, hundreds of thousands of private sector employers dependent on cheap and vulnerable foreign workers will have a major say in whether illegal immigration diminishes. Past performance is not encouraging. Labor-intensive industries such as agriculture continued preferring illegal workers during the Bracero program and following the 1987-1990 amnesty’s legalization of 1.1 million purported farm workers.

Illegal immigration for low-wage employers fills a critical perceived need. Guest worker programs, to the extent they uphold basic wages and conditions, eliminate important advantages for such employers — making guest workers a distant second choice. The stand down of INS internal enforcement and sanctions against employers in the roaring 90’s demonstrates the political clout of employers of illegals — clout the laissez-faire, business-friendly Bush administration is unlikely to challenge.

Amnesty: Tens of Millions More Straws on the Camel’s Back

The average American shows little concern for devastating population outcomes that may be decades away. But he or she can see some of the effects of it now year by year. The largest ever intercensal growth of the foreign born population, 13 million between 1990 and 2000, was an eye-opener for many. And the link is evident between that exuberant growth and pervasive school crowding and shortages of affordable housing.

An amnesty in the next few years will bring even more rapid growth in the foreign-born population, the foreign stock, and the nation. This growth would be appreciably higher if the proposed amnesty is extended to all nationalities. The forty million persons ultimately qualifying for legalization or family preferences would implant myriad new immigration ladders in troubled and crowded countries now low on links here.

The 2000 Census showed the greatest population surge for any decade — 32 million additional residents in just ten years. The Census Bureau consistently underestimates immigration in projecting the US population, producing population projections for 2000 that were 7 million too low. Immigrants and their US-born children now account for 60 percent of US population growth. About 20 million of the new residents were either immigrants or the 7 million children born to immigrants. Each expansion of already high immigration adds to the momentum that is leaving far behind the limits that an environmentally safe and sustainable US population demands. That upper limit of sustainability was breached about 1970 when population passed 200 million and the National Commission on Population and the American Future recommended that immigration go no higher.

If immigration-based population growth, now about 1.4 million annually, continues its upward trend of the 1990s, the US could well be headed for a mid-century population of 550 million, not the 404 million deemed the “most likely” outcome by Census in its 2000 projections. With the booster fuel of massive amnesties and guest worker programs, and the consequent opening of new immigration channels to heavily population nations, annual immigration is likely to rise to Census’ “highest” projection of 2.2 million by 2025.16

With the Census’ highest projection of immigration now increasingly plausible, and with the heavy influx of higher fertility nationalities, the US population will reach the half-billion mark in 2044 with considerable built-in momentum. A stable population at a sustainable level will have become a distant dream. Continued growth on this trajectory after 2044 would
have the US joining China and India in the dubious "one billion member club" by 2088, just one lifetime from now.

An Alternative to Amnesty: Hold the Line, Let Attrition Work

In the debate leading up to the 1986 amnesty some legislators held out for regaining control of our borders first — then amnesty. Though they were unsuccessful, it is still good advice. Stopping now the yearly net flow of some 400,000 unlawful migrants with tougher border controls and internal enforcement would end further growth of the illegal population. Then the numbers would begin to fall through attrition and by legalization of those here now and genuinely entitled under existing laws. Now, about 200,000 one-time illegals and overstays are legalized in this fashion each year. That number would decline as tighter immigration controls took hold.

Another 180,000 illegal aliens now are removed from the country every year. The number of removals with modest effort could realistically be expanded by at least another 50,000 to 75,000 yearly. More determined deportation efforts would also stimulate an even higher level of voluntary departures. If new cohorts of illegals were blocked, one could expect an annual decline in the illegal population, now eight to ten million, to fall by as much as 4 million in a decade.¹

Whatever the strategy, Americans must recognize the high long-term environmental and social costs to US society of another mass amnesty. The immigration laws are complex, malleable and mystifying. Only an alert and determined public can mount the informed resistance needed to thwart further mass immigration in both its overt and stealthy forms.

NOTES


4. Lowell and Suro.


10. Massey and Durand, p. 140.


