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Two Paths to Safety



***A Private Sector Initiative to Break
the Illegal Immigration Deadlock***

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Table of Contents

Section		Page
	Introduction	3
I.	Executive Summary of the Proposal	5
II.	How Did We Get Into This Mess? (A Short History of the Issue)	7
III.	Why Can't Something be Done? (The Current Political Dilemma)	9
IV.	Political Wisdom v. Economic Reality (Why the Issue is So Important)	11
V.	Solution – a New Private Sector Initiative	14
	▪ A New Guest Worker Program	14
	▪ Controlling the Border	15
	▪ The Private Sector Role	15
	▪ Regulating Employers and Employees	15
	▪ Toward Citizenship?	16
	▪ Tracking Workers	16
	▪ Enforcement	16
	▪ The Costs and Benefits	17

Introduction

During World War II Congress created a program of temporary worker visas for Mexican farm workers, to counter a severe labor shortage. Known as the “Bracero” (farm worker) program, it provided jobs for some 5 million legal guest workers over the next 20 years.

The program succeeded in supplying a critical labor force for farms during the 1940’s and ‘50’s. It did not entirely succeed in stopping the flow of illegal immigrants across the Mexican border, which continued for most of the century. Nor did it provide workers to fill labor shortages throughout the country, as it was intended only for farm workers. There were regulations regarding work conditions, wages, housing, and social services, though efforts to ensure good treatment of guest workers were not always successful. When the program was abolished, some leaders of the civil rights and labor movements declared victory for migrants, and declared that the abuse of such workers had finally been eliminated. It had not, and it still has not.

In fact the result was a return to an even earlier system of migrant labor – a system based on cash payments for anonymous workers whose existence is undocumented, unclaimed, and unregulated. A system reliant on immigrant workers was not abolished – it was simply driven underground. Now an ingrained part of our culture, a modern-day reverse “underground railroad” moves workers by the millions into the American labor market undetected by a government that has proven unable (or unwilling) to control its borders. Counterfeit documents elude superficial enforcement efforts and are cheap and readily available throughout the United States. Today no one knows the number of illegal workers in the US; estimates range wildly between 4 and 20 million. Nor is it known how many of this number are illegal temporary workers and how many are actually immigrants.

The impact of this enormous labor force on the American economy is staggering. It has touched off a new outcry from the public, demanding better control of our borders, and angry at the use of tax money to subsidize people who are here in violation of the law. Yet our economy is also increasingly dependent on this same labor force, prompting political leaders throughout the country to struggle for solutions. Thus far, no single solution has emerged, partly because the entire debate is based on a false premise. In a national debate on “illegal immigration,” leaders on every side of the issue miss a critically important point – the activities of most illegal aliens in this country have nothing to do with immigration!

The debate could be radically different if leaders understood that the vast majority of illegal workers in the U.S. are not here seeking citizenship, or even permanent resident status. They are workers with families to support back home, and they have every intention and desire to return home. They are here because they cannot hope to earn as much working at home, but they are here for the money, not because they want to be permanent Americans. Thus, by definition they are not immigrants. They can be

referred to as “migrant” workers, “undocumented” residents, the “unauthorized” population, or by other terms. Millions are here illegally. But the debate about “illegal immigration” is a false debate and it fuels deep-seated concerns about amnesty, and other paths to permanent resident status, even citizenship. However, to the extent this is not the objective of most illegal workers, a program to provide legal guest worker visas for these people does not require a significant change in immigration laws. The laws regulating immigration, citizenship, and green card (permanent resident) status ought to be strictly enforced, not severely changed. But the debate is simply not relevant to most illegal migrant workers in this country. If a legal program eliminated the “need” for the vast majority of these workers to cross the borders illegally, border control would be a very different discussion indeed.

Leaders on all sides of the debate know a new legal guest worker program is clearly needed – one that can supply the needed workers, stabilize the economies of both the US and Mexico. And they all know we must eliminate national security concerns by controlling the borders. But much disagreement still exists about whether or not illegals already in the U.S. can be persuaded to go through new steps to get documented.

We propose a new program with a private sector component that can solve the most difficult part of the problem – making guest worker status quick enough and easy enough that the workers (including those already illegally in the U.S.) will take the steps and get documented. The active involvement of the illegals themselves will make the program work, and resolve one of our nation’s most serious security problems. And the alternatives are clearly not working. Unless illegals already in the U.S. believe obtaining guest worker status will be quick and certain, they simply cannot be expected to apply.

The basis of this solution is simple. Separate the guest workers and immigrants in the debate, and in the legal system, on two completely different and unrelated paths. And use the powerful incentives of the free market system to guarantee the success of the guest worker program. The results will be:

- A much simpler process for controlling the border because most of the problem won’t be there any more,
- An easy path for businesses to find the workers they need,
- A simple path for workers to get the jobs they need,
- A safer and more secure America.

Executive Summary

Solution: Border Control, Guest Workers and Private Employers

This complex and controversial issue can be resolved only when competing interests come together on a plan to accommodate both sides. That means control of the borders, and it means a new legal guest worker program. The unique approach we propose – private employment agencies – would help accomplish both objectives while offering a novel solution to the current logistic problems faced by workers wanting to come to the U.S.

Major components of the new private-sector initiative:

- *Two Paths to Safety.* This approach is based on separating the alien population into two different groups, on two different legal paths. One group that wants to become permanent residents or citizens would have to comply with existing laws and procedures, including the important process of assimilating into American culture. The second group, temporary guest workers, would be given a different path, a simple way for workers and their families to come to the U.S. for specific jobs and for specified periods of time. It would also require them to go home at the end of that time, and would give them no access to the permanent resident path.
- *The “Guest” Visa.* A new guest worker program based on worker visas that specifically describe the location, employer and job for which the card is issued, along with the duration and personal information about the worker. Such information can be encoded on the card itself in a magnetic strip, much like a credit card. Such temporary worker visas would eliminate the security concerns caused by the current undocumented system of secrecy.
- *Controlling the border.* The borders of the United States must be controlled absolutely, using whatever technology and manpower is available, so that illegal clandestine border crossings are eliminated. This is a prerequisite to the workability of this new program, but would also be enormously cheaper because it would eliminate the need for most clandestine and dangerous border crossings.
- *The private sector role.* Private employment agencies would be allowed and encouraged to set up “Guest” offices in Mexico and other countries, and would be licensed by the U.S. government to issue “Guest” cards following a required instant background check, much like those used for domestic firearms sales, with the U.S. and native governments. This would all but eliminate the long and expensive waiting periods that are such a disincentive to workers, who would prefer the legal route to better jobs in the U.S.
- *Regulating employers and employees.* Employers would simply post jobs with the private employment agencies specifying location, duration, wages and other required information. In addition, employers would have to demonstrate earlier attempts to hire Americans. Employers would then continue to pay taxes, and follow all laws that would otherwise relate to hiring local employees.
- *Toward citizenship?* The “Guest” card would in no way be a path to citizenship or to permanent resident status. Systems already in place for immigrants wanting

naturalization or permanent status would not need to change. This is not an amnesty program.

- *Tracking workers.* Employers would be able to check the legal status of applicants with a simple phone number to validate the “Guest” card and identify the worker. It would remain illegal to hire any worker not in the country legally.
- *Enforcement.* Strong enforcement on several levels would be required for the program to succeed. First, border control is essential to eliminate the availability of illegal “cash” workers. Second, enforcement of sanctions against employers who hire illegals would be needed to ensure workers whose cards were cancelled had no choice but to return home. Such sanctions would be fair to employers if the system for legally obtaining needed workers were in place. Third, workers would be required to stay on the job for which the visa was issued, and employers would be required to report any worker who left. A process for workers to change jobs would be created, but the “Guest” card could immediately be cancelled for workers who disappear, or who commit crimes. Finally, workers already in the U.S. illegally would be required to return home, apply for and legally obtain the “Guest” card from a licensed employment agency. They would have a strong incentive to do so if the other elements of this plan were implemented.

How Did We Get Into This Mess?

(A Short History of the Issue)

The government estimates that about 9 million Mexican nationals live in the United States, including some 4 million it believes are in the country illegally. Other observers across the political spectrum commonly estimate the number here illegally between 10 and 20 million. Before the September 11, 2001 attacks the Bush Administration was considering a significant overhaul of national immigration policy that would have granted legal status to many “illegals.” Though the discussion was put on hold after the terrorist attacks, pressure is again mounting and the debate is well underway again in Congress. Yet candidates throughout the country in 2004 had to deal with the issue gently, because amnesty for illegals has become enormously unpopular with voters, even though some aspects of the national economy have grown dependent on a workforce that includes millions of workers not legally in the country.

Migration across the Mexican border has been a political issue, and an economic reality for more than a century, especially since the Spanish American War. Between 1901 and 1910 almost 50,000 Mexicans were legally admitted to the US, a number that has grown more or less steadily every decade since, reaching nearly 2 million during the 1990’s. But for the past 100 years or more, illegal border crossings have outnumbered legal entries to the U.S., particularly following periods of stricter regulation of immigration. For instance, when Congress mandated literacy tests for immigrants in 1917 the number of illegal border crossings spiked.

American public opinion on “illegal immigration” is complex, but has had one constant: it has always been directly linked to America’s economic situation. Wartime labor shortages have always increased demand for labor, leading to more border crossings. The need for farm labor during World War I was so severe that the INS commission temporarily waved the literacy requirement, and during World War II it led to creation of the “Bracero” program. Conversely, economic downturns in the US have led to public demands for crackdowns because Americans needed the jobs. During the first four years of the Great Depression 345,000 Mexicans were deported, and during the 1954 recession a massive border roundup called “Operation Wetback” led to the deportation of more than a million.

Concerns about the treatment of farm workers, combined with pressure from labor unions, led Congress to kill the “Bracero” Program in 1963, and the flow of illegals across the border has continued unabated ever since. The Immigration and Naturalization Act of 1965 abolished the old system of national quotas and changed the criteria for immigration to a system based on family reunification and needed job skills. Illegal entries into the U.S. continued to increase. The Immigration Reform and Control Act of 1986 offered amnesty to illegal aliens in the US before 1982, imposed fines on employers who knowingly hire illegals, and established a temporary resident category for agricultural workers.

The 1994 North American Free Trade Agreement (NAFTA), despite its many advantages to the American economy, also caused a spike in border crossings. As tariffs were lifted on imports to Mexico, prices on farm commodities dropped sharply in Mexico, causing increased migration from the land to cities – and across the border to better-paying jobs. The INS responded by attempting more thorough control of key border crossing checkpoints (“Operation Gatekeeper”), but the result was to force migrants to cross increasingly inhospitable terrain, and the growth of underground tunnels and other more clandestine and dangerous strategies. The deaths of illegal aliens crossing the border have also sharply increased since 1996, to about 400 per year.

Congress responded to the NAFTA problem in 1996 with a sharp increase in funding for border patrol security and increased penalties for illegal entry. Since 1994 the number of border patrol agents has more than doubled to over 10,000 and the number of apprehensions also sharply increased, to a high of 1.6 million in 2000. The government says the number of apprehensions has dropped each year since 2001 because stricter enforcement has deterred illegal crossings. Yet it is unclear whether these efforts are really succeeding, or if migrant workers have simply found better ways to avoid detection. One sure thing: the amount of money Mexican workers sent home increased from \$10 billion a year in 2002 to \$12 billion in 2003.

As a result of the public concern about unknown and illegal residents, heightened after 9/11, policy-makers from the White House to the courthouse are struggling with solutions. The Bush Administration and many in Congress continue to argue the economic importance of the workforce and to push for creation of a legal guest worker program, along with a reasonable path to permanent status and citizenship for those already in the US. Others press the case for border control, security and a jobs policy that puts Americans first, and still others argue the need to eliminate public subsidies for illegal activity. Congress has thus far been unable to muster a majority on any side, because all of them are right to some degree, and thus far no one has proposed a solution that is a victory for all sides.

Meanwhile, the issue is growing in importance to voters because illegal immigration continues at an explosive rate, and because illegals are now being seen in every occupation and in nearly every city and community. Previously concentrated primarily in 5 states (California, Texas, New York, Florida, and Arizona), illegals are rapidly dispersing elsewhere across America. Demographers have followed rapid growth in the illegal populations in North Carolina, New Jersey and Illinois, all of which have between 300,000 and 400,000 illegals. But the growth continues beyond those major states. Today Colorado, Washington, Georgia, Virginia, Maryland and Massachusetts all have populations of over 250,000 illegals. In Colorado more than half of all foreign-born residents are illegals.

Similarly, the demographics of these people are shattering many of the long-held beliefs of casual observers. For instance, not only are they no longer confined to farming occupations – VERY few are engaged in agriculture at all. According to Pew Hispanic Center research, only 3% of illegals are employed in farming. Fully 33% work in service

occupations, 17% in construction trades, and the rest in production, installation, repair, transportation and moving. Even 10% of the illegals are in management, business and professions. The old “Bracero-era” perception of men working in the fields while their wives work the packing sheds aren’t accurate anymore, either. Only 56% of illegal women work at all (compared to 73% of American women), with massive numbers becoming stay-at-home moms. Although the stereotype of single men coming to America to work is a commonly-held view, in fact fewer than half of the illegal adult men are single. And only one in five illegal adult women are single. Indeed, there are now estimated to be more than 3 million American children – U.S. citizens – whose parents are illegals. That’s more than double the number of illegal children in the U.S. Thus, simply deporting such families is not only difficult, in many cases it is legally and politically difficult.

Yet this population remains of deep concern to many Americans, and continues to drain financial resources, especially at the local government level. The educational level of illegals is far lower than that of American citizens. Over 50% of illegal high-school-age students drop out before graduation. About a third of the illegals have less than a 9th grade education. Illegals also continue to work the lower-wage occupations, the average illegal individuals and families earning less than half the average Americans’ wages. Since about 3 times more illegals live below the federal poverty line than citizens, they are over-represented among people requiring social services, and in jails. One of the most significant problems (health care) is worsened by the fact that so many illegals are uninsured. While only 14% of natives are uninsured, almost 60% of illegals have no health insurance. The drain on taxpayer-funded resources in the United States will continue to increase until a solution is found to this very complex issue.

Why Can't Something be Done? *The Current Political Dilemma*

National policy-makers are seriously split on the overall approach to the immigration issue, even though most agree that something needs to be done. Indeed, vast majorities of American voters insist that the current system of unchecked “illegal immigration” is unacceptable. A Tarrance Group survey compiled March 20-22, 2005 found fully 83% of the public agreed a controlled system “that would replace an illegal immigration flow with a legal immigration flow” is needed. Overwhelming numbers of voters were found to support a new temporary guest worker system, and most national leaders have already endorsed some version of such a plan.

Nevertheless, Congress seems unable to act on a major reform plan, despite virtually universal agreement on the importance of doing something. The political dilemma for the majority party is simple: its major constituencies have competing goals.

Put simply, the Republican Party controls both the legislative and executive branches of the federal government, but represents constituent groups whose immigration views are widely divergent. Law-and-order conservatives are a critical component of Republican bases nationwide and insist that the current illegal system threatens national security and violates the rule of law. They cannot tolerate continued lack of control over America's borders and won't engage in a debate on a new policy unless and until it begins with complete border control. Congressman Tom Tancredo, leader of the House Immigration Caucus, has written, “Millions of newcomers who have played by the rules have earned our support and respect; those who ignore or violate the rules deserve neither.”

The Republican Party's political base also includes millions of fiscal conservatives, who express outrage at the use of tax dollars to subsidize illegal activity. They have driven numerous state and local governments to prohibit public funding of services for illegal aliens, and fueled a national debate on issues from drivers' licenses to public education. Granting in-state tuition subsidies for the children of illegals, for instance, is a current hot button political issue in at least a dozen states.

Conversely, business leaders – also a crucial part of the Party's national base – are dependent on a workforce that includes huge numbers of migrant workers. These leaders historically oppose major government intervention in the economy, and are thus generally against further intrusion into labor matters. But more to the point, some industries would be devastated by the mass deportation of their workforce. Industries including agriculture, services, and construction have become dependent upon these workers. A system that provides for the orderly continued availability of such workers has become essential to the debate for these groups. U.S. Chamber of Commerce V.P. Randel Johnson has spoken and written often about the importance of immigrants providing an inexpensive source of labor to fill jobs it is difficult to find Americans to do. The Chamber strongly supports a plan to bring illegals into legal compliance to reduce the

risk of penalties faced by companies that employ them even though the companies have no good way to ascertain an individual worker's legal status.

Each side wields enormous influence in the nation's Capitol, and it is unlikely that a solution can be found without each being satisfied. The polarization of the issue – among conservative leaders – is astounding. For instance, one “conservative statement of principles” published in the Wall Street Journal February 6, 2005 was signed by solid conservative leaders such as Stuart Anderson, Richard Gilder, Newt Gingrich, Ed Goetas, Jack Kemp, Steve Moore, Grover Norquist, and Malcolm Wallop. A response published a few days later was signed by Tom Tancredo, Michael Reagan, Bay Buchanan, Phyllis Schlafly, David Keene, Dana Rohrabacher and Paul Weyrich. The first paper argued the importance of the immigrant workforce to the U.S. economy, and the response argued with equal force the importance of controlling the border. A few months earlier, the Heritage Foundation had published yet another statement of principles by Ed Meese and Matthew Spalding calling for both better enforcement and a simpler path to legal immigration.

Until these varied interests – usually on the same side of winning issues for the Republican Party – can be brought together, it is not likely Congress will agree on a new reform plan, however strong public support may be. In fact, it is unlikely even Republicans in Congress will be able to join forces on a new plan so long as groups like the U.S. Chamber, Americans for Tax Reform, and Club for Growth have a different perspective than the Heritage Foundation, and so many of the icons of conservative thought in America. Bloomberg News ran an article April 15, 2005 (“*Bush's Immigration Plan Divides Republicans, Deadlocks Congress*”) in which lobbyist Thomas Mann said “the odds are less than 50-50” that the President's current proposal will succeed, because of these competing factions.

A solution must be found that gives each side what it needs. One side insists on absolute control of the borders as a prerequisite to the debate, and another needs a system to guarantee availability of the workforce at a reasonable cost. It is possible to do both. They are not mutually exclusive, but no proposal has yet emerged that meets the needs of each side.

Most aspects of a solution that works for everyone seem simple enough – border control AND a legal guest worker program. But the last piece remains unanswered – how can we ensure that workers already in the U.S. will go through the process to get documented? They cannot be expected to “report to deport” and they won't go back home first unless they are certain they can return. That dilemma points to an important part of the problem that is rarely discussed in policy circles, but very real to the workers. The bureaucratic pace and enormous backlogs that plague government agencies have grown steadily worse over the years. For many workers wanting jobs in the United States, the wait is simply too long, the process too cumbersome, and the cost too high. So the inability of government to respond quickly to such needs simply adds another (fairly powerful) incentive for people to come illegally, rather than wait for the legal process. Government employees, of course, get paid the same whether they issue visas in

a timely manner or not, so they will never have the same incentive to make the program work that private companies would have. The private sector component in this plan is the key to a final solution.

Political Wisdom v. Economic Reality

Why the Issue is So Important

The survey compiled by the Tarrance Group in March (2005) made clear that there is broad support for a new immigration plan such as the President's proposal. In fact, the survey found more than 75% of likely voters in support of a plan to register undocumented workers, provide temporary work visas for seasonal and temporary workers, penalize employers and employees who break the law, and get control of the borders.

Among the most interesting and unusual findings in the survey was the nearly universal support across a wide array of demographics. Such a plan is strongly supported by Republicans, Democrats and Independents, by men and women, by white, black and Hispanic voters, by urban and rural voters, and by union and non-union households. More subtly hidden between the lines in the survey, however, are the same contradictory feelings that plague the primary interest groups working the issue in Washington.

By a supermajority of 84%, people surveyed think penalties for those who violate our immigration laws should be tougher. More than 80% think undocumented workers ought to be forced to register, and 86% want a legal system to replace the current illegal system. Yet despite their strong support for border control, a vast majority think deporting all the illegals already in the U.S. is unrealistic, and more than 80% think immigrants who have been working, paying taxes and learning English should be rewarded. However, though people believe in rewarding legal behavior, strong majorities also oppose use of a temporary work visa as any sort of credit toward citizenship.

The simple reality is that most Americans understand the wisdom – and the necessity – of controlling our borders, and most refuse to believe it can't be done. Third-World thugs across the globe seem to be able to control their borders, and Americans don't believe the United States cannot do so. But most Americans also understand that immigration is a part of our history and culture, and very few share a general opposition to any immigration.

One reason the politics seem so complex is that the impact on the U.S. economy is equally complex. The U.S. Chamber of Commerce argues persuasively the need for an affordable workforce, and the importance of certainty to employers. Clearly there are jobs that would go unfilled if not for migrant workers, making their presence important to the continued strength of the American economy. This has been the case for decades in the agriculture industry, but in modern times it seems that hotels, restaurants and others in the service industries and construction companies have increasing difficulty filling jobs with local citizens. These segments of the American economy are not small – they generate hundreds of billions in the national economy annually. Senator George Voinovich points to the \$73 billion annual impact of agribusiness in his home state of Ohio alone. Immigrants have become an important aspect of the American economy, like it or not, and reforms that guarantee an available workforce must be found.

Voinovich sites studies showing that each farm worker in the fruit, vegetable and nursery industries supports 3 ½ jobs for Americans in the surrounding economy: processing, packing, transportation, equipment, supplies, banking, and insurance.

On the other hand, some correctly see immigration as a simultaneous drain on the economy. It is undeniable that illegal aliens have a dramatic impact on American schools, social services, roads, jails, and health care facilities. There are numerous studies analyzing these impacts, some concluding that immigration is a net drain on the economy, others arguing the reverse. Time Magazine (6-11-01) reported, "it costs border counties \$108 million a year in law enforcement and medical expenses associated with illegal crossings." The article also discussed a shortages of judges to hear all the drug and smuggling cases related to illegal residents, and said some Arizona ambulance companies face bankruptcy "because of all the unreimbursed costs of rescuing illegals from the desert."

It would be a mistake to underestimate the significance of the illegal population, or its impact, positive and negative. Even conservative estimates place the number of illegals at more than 9 million (Urban Institute Immigration Studies Program), more than a fourth of the entire foreign-born population of the United States. Mexican immigrants make up nearly 60% of that total and 23% are from other Latin-American countries. Although 65% of these illegals live in six states, the most rapid growth in the undocumented population since the mid 1990's has been outside those states. The Urban Institute, based on Census data, estimates more than 5% of all U.S. workers to be illegal immigrants. Further, nearly half of the entire foreign-born population in eleven western and southern states is undocumented, and over 30% in another 12 states.

The costs of illegal aliens to American taxpayers is also staggering. In Arizona, the federation for American Immigration Reform estimates public expenditures for illegals to be \$1.3 billion per year, primarily in education, health care, and corrections. In Texas, it is estimated at \$4.7 billion per year. The full cost to governments across the nation can only be estimated, of course, since the number of illegals is only estimated. Dr. Donald Huddle, a Rice University economics professor, published a systematic analysis of those costs in 1996, including an estimate of tax payments by those same aliens. At that time, the illegal alien population was estimated to be about five million, and the estimated cost of those illegal aliens to the federal, state and local governments was about \$33 billion. This impact was partially offset by an estimated \$12.6 billion in taxes paid to the federal, state and local governments, so the net cost to the American taxpayer was about \$20 billion every year. This estimate did not include indirect costs such as unemployment payments to Americans who lost their jobs to illegal aliens, lost tax collections from those unemployed American workers, etc., which were estimated to be an additional \$4.3 billion annually.

If as commonly estimated the illegal alien population has doubled since then, the estimated fiscal costs also will have at least doubled, not even allowing for inflation. All told, that means by Dr. Huddle's methods, a 1996 cost to the American taxpayer of \$33 billion would today be at least \$70 billion, and the net expense to the taxpayer from illegal aliens today would be at least \$45 billion. The indirect costs could now be another

\$10 billion annually. Some groups have made estimates of economic impact even higher, though complete and accurate numbers may never be known.

The inescapable reality is that the impact of illegals on the U.S. economy is complex in value, but staggering in proportion. It is little wonder the issue is clearly on the radar screens of Americans from national policy makers to average voters.

The Solution

A New Private Sector Initiative

Bringing together the requirements of leaders concerned about multiple aspects of this issue requires a new approach, one that will both control borders and offer temporary guest worker visas. What has been missing from the debate is a discussion of how such a program could resolve the logistic and bureaucratic problems that have caused such attempts to fail in the past. Put bluntly, border control is the easy part of the equation; it requires money, technology and manpower, all of which are available if the political will can be found. Similarly, creating a legal guest worker program requires fairly straightforward modification of existing programs, and Congress has several such plans already pending. The more difficult component is the logistic system to be used by the workers and employers themselves. Absent a major new approach, there simply is no strong incentive for either. Using simple and well-understood business practices in the private sector – and empowering the private sector to implement the plan – could finally provide exactly the system to resolve one of the nation’s most difficult and pressing problems. The plan is based on a combination of several simple plans:

The “Guest” Visa. A new guest worker program would be created based on worker visas in the form of cards carried by the workers. The cards would specify the location, employer and job and duration for which the card is issued. In addition, the card’s code strip could also include significant personal information about the worker: name, address, ID numbers, employment history – anything that can be encoded on the card itself in a magnetic strip, much like a credit card. At border crossing points, the card could be swiped like a credit card and border agents could know instantly whether it is valid and current. The cards should have a photo so the identity of the carrier would also be clear, and a fingerprint requirement would make future identification of the cardholder a certainty. Similarly, when the worker arrives at the place of employment, employers would be able to check the card’s photo to ensure identification, and could easily place a phone call to a number set up to ensure that the card is valid and current. Eventually, many employers might also install credit-card type machines that could read the encoded information with a simple swipe of the card, and a phone system could remain in place for small employers. Law enforcement officials would also be able to check cards instantly whenever such identification may be required. If implemented correctly, the “Guest” cards would eliminate the security concerns caused by the presence of undocumented workers. Current law already requires temporary workers to have valid passports and current Social Security cards. Together with these new requirements for the “Guest” card, these measures provide the best possible security for Americans. With those concerns addressed, there is no need for artificial control of the number of “Guest” cards, because the market would keep a constant check on the flow of workers. If the system for obtaining such cards were simplified, as described below, all immigrants should have some form of legal documentation: permanent resident (green) cards, asylum documentation, or “Guest” cards. They would replace the existing temporary work visas, but would be completely separate from the current system for obtaining green cards, permanent status, refugee/asylum status, or the process for citizenship. Workers would also have a strong incentive to obtain the legal status if “Guest” cards were also available

for their spouses and children (many other countries, such as Japan, issue guest worker cards to immediate family members, too), so families could be kept intact.

Controlling the Borders. Both international borders of the United States must be controlled absolutely, using whatever technology and manpower is available, so that illegal clandestine border crossings are eliminated. Congress and the President had agreed in 2004 to add another 2,000 border guards, though the addition has not yet been fully funded. In addition, installation of the technology required to monitor all border crossing sites should be authorized and funded. Although the Mexican border is the source of the vast majority of illegal crossings, the Canadian border must not be ignored, since the national security risk is at least as serious there. Many leaders rightly see complete border control as prerequisite to the workability of any new guest worker program, but the right kind of program would also make such border control easier, and cheaper. If the vast majority of illegals had no further reason for illegal entry, border control would be considerably less expensive. The current complexity and danger of illegal crossing, and the constant threat of deportation afterwards, provide a very strong incentive for workers to apply for the “Guest” cards, especially if the cards can be obtained in a fairly simple system.

The Private Sector Role. The meat of this proposal is that private employment agencies would be allowed to set up “Guest Worker” offices in Mexico and other countries. They would be licensed by the federal Office of Visa Services and empowered to issue “Guest” cards to applicants in their local offices. Prior to issuing the cards, the agencies would be required to run an instant background check on the applicant. These checks, much like those used for firearms sales in the U.S., would be accomplished by contact with the U.S. government and the government of the native country. The goal is to ensure the cards are not issued to applicants with criminal records or those who have violated the terms of previously issued “Guest” cards. Some leaders have called for the Office of Visa Services to be transferred from the State Department to the Department of Homeland Security (Ed Meese and Matthew Spalding made the suggestion in their October, 2004 Heritage Foundation paper, for example). Whether the Office is transferred or left at State, it would need the ability to check applicants against databases of the Homeland Security Department and FBI. Completing such background checks quickly is crucial to the success of the program. Firearms purchases require such checks under the “Brady bill” and are rarely delayed more than 24-48 hours. Such a quick turn-around time would also ensure the willingness of workers to wait for the process and obtain a legal guest worker card. Researchers have learned that the waiting time of months or even years required for the few work visas issued, along with the high paperwork cost, simply makes illegal border crossings the only alternative, in spite of the danger. But private companies whose profit depends on the success of the effort have a strong incentive that governments do not have. Their success will depend on getting the background checks done, getting the visa cards issued, ensuring the compliance of the workers, and affording legal certainty to employers. The business market will react quickly to timely and accurate performance. Most illegal workers say they would prefer to be in the U.S. legally, if there were a dependable and orderly system for obtaining such temporary work visas. This program could accomplish that.

Regulating Employers and Employees. Employers would simply post jobs with the private employment agencies specifying location, duration, wages and other required information. In addition, employers would have to demonstrate attempts to hire local citizens before seeking “Guest” workers. Part of the goal of this proposal is to eliminate the undocumented cash system used by so many employers and workers today. That means employers will have to pay taxes, and follow all the laws that would otherwise relate to hiring local employees. That includes social security, workers compensation, minimum wage, and all other labor laws that apply to American workers. For many employers this would mean a slightly more complicated system, and perhaps slightly higher wages. But most would have a strong incentive to comply: a steady and dependable supply of needed workers, and an end to the constant fear of penalties for hiring illegal workers. Some employers hire illegals purposely to lower labor costs, but many do so without knowing for sure. Forged documents are common and inexpensive, so even employers making a good-faith effort to hire legal residents are subject to potential fines and other penalties. Under the proposed “Guest” system, knowing the workers will be available when needed, verifying their identities and their legal status, and keeping the same workers for the duration of the job, would provide powerful incentives for compliance with labor and tax laws. With respect to Social Security and wage withholding, several plans already pending in Congress deal with the money by establishing employee “trust funds” held by the Treasury Department until such workers return home. In one plan, the funds are used to obtain health insurance for the workers, and in another it is simply held in trust and returned to the workers when they go home. Returning the workers’ funds upon their return to their native country is a sensible approach, since it adds yet another incentive for guest workers to comply with the law and return home after their term of work is expired. Social Security employer contributions could be kept in the Social Security trust fund as proposed in several current bills. Alternatively, if those contributions were returned to the employer when the worker leaves the country, employers would also have a stronger incentive to encourage compliance with the terms of guest worker visas.

Toward Citizenship? The “Guest” card would in no way be a path to citizenship or to permanent resident status. Systems already in place for immigrants wanting naturalization or permanent status would not need to change. Many leaders of the immigration debate feel strongly that temporary work visas should not give applicants a leg up toward citizenship, and the White House proposal also makes that clear. Although successful completion of guest work over several years could be seen as evidence of good character and dependability, it should not place a worker at the head of the line. Indeed, contrary to common misunderstanding, the vast majority of illegal workers in the U.S. are not here seeking permanent residence or citizenship. Most have families at home, come here to earn money they cannot hope to match at home, and have every intention of returning home. Those who desire citizenship or permanent resident status should have to apply like all others in the already-existing systems. For the large majority of workers, though, this is not an issue and it should not become an issue in creating the new “Guest” program.

Tracking Workers. As mentioned above, employers would be able to check the legal status of applicants with a simple phone number or card swipe to validate the “Guest” card and identify the worker. It would remain illegal to hire any worker without a card or whose card had been cancelled, or to hire such a worker for a job other than that specified on the card without government approval. There are some instances in which a worker might come to the U.S. with a valid “Guest” card, then find himself in an unworkable situation and need to change jobs. A system for doing so, in consultation with duly constituted authorities, should be included, rather than requiring the worker to return home and re-apply. Such a system could avoid potential concern about mistreatment of “Guest” workers, while still ensuring the U.S. government knows where the worker is.

Enforcement. Strong enforcement on several levels would be required for this program to succeed. First, border control is essential to eliminate the availability of illegal “cash” workers, as previously noted. Second, sanctions against employers who hire illegals must be enforced. Third, workers would be required to stay on the job for which the visa was issued unless authorities had granted a job change as mentioned above. Otherwise, employers would be required to report immediately any worker who disappeared, because the card could immediately be cancelled for workers who left the job, or who commit crimes. These sanctions, if enforced, would ensure workers whose cards were cancelled had no choice but to return home. The U.S. Chamber of Commerce rightly expresses grave concern about sanctions today, because of the difficulty many employers have in determining the legal status of workers, and because of the fear that workers may not be available. However, such sanctions would make sense to employers if the system for legally obtaining needed workers were in place, and if ensuring the legal status of workers were a simple matter. Finally, workers already in the U.S. illegally must be required to return to their home country, apply for and legally obtain the “Guest” card from a licensed employment agency. They should not be penalized for doing so, since part of the objective is to provide a strong incentive for such unauthorized workers to become documented and work legally. They would have a strong incentive to do so if the other elements of this plan were implemented, but cannot be expected to return to their home countries absent a strong certainty that they will be allowed to return to the U.S. as legal guest workers. If that certainty were provided, however, as under this plan, they would have the ability to gain legal status, to continue current employment following a brief trip home to obtain the card, to come and go across the borders easily, and to enjoy some of the benefits American workers have on the job, especially proper insurance.

Costs and Benefits. Estimating the exact costs of such a new approach would be hypothetical and difficult, except the added cost of border security. Although the cost of increased security is already well documented, there is every reason to expect such control would be less expensive and easier if the largest percentage of illegal border crossers had no further reason to be there. Part of the advantage of this new approach is that government itself would not have to bear much of its cost. The cost of the new cards and the required background checks would be born by the private sector. Employment agencies wanting to issue the cards would open the local offices, arrange the system for job postings, create the cards themselves, and monitor compliance by the workers (who

would become clients to these companies). The fees they charge to applicants would have to cover these costs and generate a profit, but would not be unreasonable, because competition from other companies would keep the fees within the bounds of what the market could bear. Governments need play no role in determining these fees, though the U.S. government could finance its cost of background checks by charging the employment agencies a user fee. These costs would pale in comparison to the current cost of illegal aliens, born largely by state and local governments, as discussed earlier. But the benefits of eliminating the illegal and undocumented system now in place would be inestimable. The benefit to national security of border control is at the heart of government's first responsibility to its citizens. The availability of a dependable workforce is central to American business, so the benefit of such a program to the economy is enormous. And for American citizens, the peace of mind that comes with knowing our borders are safe, our economy strong, and our ideals intact: priceless.