Supply-Side Immigration Theory: Analysis of the Simpson/Mazzoli Bill

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Despite predictions of nation-wide anti-immigrant “xenophobia, racism and scapegoating” unless his proposed legislation was approved by Congress, Senator Alan K. Simpson failed to win passage of the Immigration Reform and Control Act of 1982 during the 97th Congress. However, given that the Senate voted 81 to 18 in favor of the bill, it can be reasonably assumed that similar legislation will be introduced in the 98th Congress.

Introducing the bill, Senator Simpson explained that in his view “immigration to the United States is out of control . . . [and] uncontrolled immigration is one of the greatest threats to this country.” Specifically, the harms caused to the United States by present levels of immigration, both lawful and unlawful, were described as “excessive population growth,” “adverse job impacts,” and the potential importation of “social, political, and economic problems which exist in countries from which [immigrants and refugees] have chosen to depart.” This article analyzes the major concepts and provisions of the Simpson/Mazzoli legislation, and offers suggestions for an alternative approach to immigration reform.

The major provisions of the proposed legislation sought to do the following:

(1) Impose fines on employers and entities hiring, recruiting or referring for employment persons not authorized to work in the United States by Immigration and Naturalization Service (“INS”).

(2) Require the President, within three years of enactment of the law, to

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5. Id.
develop a “secure” system to determine workers’ eligibility to be employed in the United States;\(^7\)

(3) Restructure the categories of immigrants who may lawfully enter the United States by establishing an overall annual immigration ceiling of 425,000. This system would include a new “independent” group of immigrants having access to 75,000 visas annually, and would abolish the ability of siblings of United States citizens to immigrate on the basis of their family relationships;\(^8\)

(4) Streamline the process of United States agricultural employers to obtain permission to import temporary foreign labor;\(^9\)

(5) Regularize the status of many undocumented immigrants\(^10\) by granting them either lawful permanent resident status or “temporary resident status” depending on the length of their residence in the United States;\(^11\)

and

(6) Eliminate various procedural protections available to immigrants and refugees in INS administrative proceedings.\(^12\)

The Simpson/Mazzoli legislation, if enacted, would have no perceptible impact on the problems posed by migration into the United States during the second half of this century. On the contrary, its restriction on lawful immigration will promote illegal migration and exacerbate massive INS backlogs on visa applications. The employer sanctions provisions will do little to deter the employment of undocumented migrants because the penalties are so light, resources for enforcement will be insignificant, voluntary compliance will be minimal, and the documents required to obtain employment will be easily forged. The provisions streamlining the procedures for employers to import temporary foreign labor will greatly increase utilization of and reliance upon such workers. And finally, restrictions on due process protections in administrative proceedings might will result in increased federal court challenges.

Until immigration reform is based upon an understanding of the global and historical nature of illegal migration into the United States and seriously addresses human rights violations suffered by undocumented immigrants in this country, little structural change will be accomplished. This task requires recognition that the international transfer of United States private capital and the international impact of United States foreign policy must be weighed in the formulation of any coherent and workable immigration and refugee policy.

\(^7\) Id.
\(^8\) Id. at S10624-25.
\(^9\) Id. at S10626-27.
\(^10\) The term “undocumented immigrant” is used to describe persons in the U.S. in violation of the Immigration and Nationality Act, 8 U.S.C. §1101 et seq. (1976). The term includes persons eligible to apply for immigration benefits.

\(^12\) Id. at S10621-23.
THE PROPOSAL FOR AN EMPLOYER SANCTIONS LAW

The primary method for reducing the flow of illegal migration into the United States under the Simpson/Mazzoli bill is the imposition of sanctions on employers who hire, and entities such as unions which refer for hiring, persons not authorized to work by the INS. An "unauthorized alien" is defined as a person who is not, at the time of employment either "an alien lawfully admitted for permanent residence, or . . . authorized to be so employed by this Act or by the Attorney General." Those hiring or referring for hire persons, whether United States citizens or immigrants, must complete a form to be prepared by the Attorney General verifying a worker's right to employment by examination of the person's documentation, including a United States passport, social security card, a driver's license, and the like.

It is unlikely that employers will voluntarily comply with an employer sanctions law. In France, employer sanctions laws, enacted in 1976, have had little impact on the hiring of undocumented immigrants. According to one expert, "[e]mployers of illegal aliens [in France] have proven to be ingeniously adaptive" to the French employers sanctions law. And, the "illegal alien problem in France is apparently as serious now as it was in 1973." Employers who hire and often exploit undocumented immigrant workers are unlikely to cease such employment practices voluntarily with the enactment of an employer sanctions law carrying light penalties, and which the government will be unable to enforce effectively without adequate resources.

The proposed law further provides that within three years the President shall implement "a secure" and reliable identification system to determine a person's employment eligibility. Civil liberties and minority organizations have argued that any system for the identification of workers eligible to work in the United States would seriously infringe on rights.
to privacy. The history of automated computerized data bank systems suggests that efforts to limit a "secure" national identifier to verification of the right to work in the United States may not be successful.\textsuperscript{21} Some members of the Select Commission on Immigration and Refugee Policy concluded that a "secure" system of identification for all United States workers would be "potentially harmful to civil liberties.”\textsuperscript{22} Congresswoman Elizabeth Holtzman, a member of the Select Commission, concluded that a national identity system could erode privacy and other rights, such as the rights of assembly, speech and association.\textsuperscript{23}

While the social security card was devised as a mechanism for social security and tax purposes only, the expanded use of such cards supports the claims of civil liberties groups that a national identification card for employment might eventually be used for other purposes. Senator Charles Percy has stated that:

The social security number was clearly not intended by its creators to become the universal identifier. But in the race to computerize every known fact stored by the Government about its citizens, the warning on our cards\textsuperscript{24} has been ignored . . . [N]ow hundreds of Government computer systems and thousands of private computer systems use the social security number in the indexing and identification of individuals.\textsuperscript{25}

The dangers of developing a national identifier have been recognized in many studies.\textsuperscript{26} As concluded by the United States Commission on Civil

\textsuperscript{21} See, e.g., Privacy Act of 1974, § 552(b)(3), 5 U.S.C. § 552(b)(3) (1976) (Act does not bar the exchange of data collected in different federal systems if the use of information is "routine").

\textsuperscript{22} The Final Report and Recommendations of the Select Commission on Immigration and Refugee Policy 68 (March 1, 1981) available at Boalt Hall, Room 37, University of California) [hereinafter cited as Select Commission Final Report]. The Select Commission recommended—by a narrow 8-7 majority—that "some more secure method of identification" beyond existing forms be utilized to implement an employer sanctions law. Id. at 342.

\textsuperscript{23} Id. at 343. By contrast, the Rev. Theodore M. Hesburgh, former Chairman of the Select Commission, has stated that the development of a "counterfeit-resistant" employment card for all U.S. workers would not present privacy problems, and would be necessary for enforcing an employer sanctions law. See Immigration Reform and Control Act of 1982: Joint Hearings Before the Subcomm. on Immigration, Refugees, and International Law and the Subcomm. on Immigration and Refugee Policy of the Senate Judiciary Comm., 97th Cong., 2d Sess. 422 (1982) (Statement of Rev. Theodore Hesburgh, Co-Chairman, Citizen's Comm. for Immigration Reform).

\textsuperscript{24} When Senator Percy made these comments each social security card had written on it: "For social security and tax purpose—not for identification." 120 Cong. Rec. 36905 (1974) (Statement of Senator Percy).

\textsuperscript{25} Id.

\textsuperscript{26} The Privacy Protection Study Commission concluded in 1977 that the Federal Government should not consider taking "any action that would foster the development of a standard, universal label for individuals . . . until such time as significant steps have been taken to implement safeguards and policies regarding permissible uses and disclosures of records about individuals . . . ” Privacy Protection Study Commission, Personal Privacy in an Information Society 617 (1977). Another study concluded that "[t]he national population register could serve as the skeleton for a national dossier system to maintain information on every citizen from cradle to grave.” U.S. Department of Health, Education and Welfare (now Health and Human Services), Secretary's Advisory Committee on Automated Personal Data Systems, Records, Computers, and the Rights of Citizens" (July 1973).
Rights, "[t] he great potential for infringement of privacy rights and the impact that this could have on the infringement of other rights strongly suggests that the national identity card proposal [to implement an employer sanctions law], if adopted, will merely exchange one problem for a different and more serious problem." 27

Groups have also challenged the proposed employer sanctions law on the ground that it would facilitate national origin and racial discrimination in employment hiring practices. While Rev. Theodore Hesburgh, Chairman of the Select Commission on immigration and Refugee Policy, concluded that a national employment identifier would increase protection for minority applicants against job discrimination, 28 this view has been disputed by almost every minority organization in the country which has addressed the question. 29 The United States Commission on Civil Rights has pointed to the "danger that passage of employer sanctions law could lead to discriminatory employment practices involving especially members of the Spanish and Asian heritage communities." 30

In testimony before the Civil Rights Commission in 1978, Daniel E. Leach, Vice Chairman of the Equal Employment Opportunity Commission, expressed his concerns over the possible discriminatory effect of an employer sanctions law:

What concerns the Equal Employment Opportunity Commission is that if legislation is enacted with employer sanction provisions... employers might act in certain ways which would have the effect of job discrimination on the basis of national origin... [T] he likelihood is that employers will ask some applicants, those of Hispanic origin, and not others to show proof of citizenship... Secondly, there’s a question of whether Americans of Hispanic national origin would be hired at all where employers are unsure the documentation of citizenship presented is a forgery and fear that they might be unknowingly violating the law. 31

While minority job applicants denied employment for discriminatory reasons could seek relief from the Equal Employment Opportunity Commission, that agency is hopelessly backlogged in responding to such complaints. Also, employers might successfully use the employer sanctions law to "articulate some legitimate nondiscriminatory reason for


29. In a letter to Senator Gary Hart, the League of United Latin American Citizens stated that an employer sanctions law would likely "result in employment discrimination by unscrupulous employers of Hispanics and other minority groups." 128 Cong. Rec. S10633 (daily ed. August 17, 1982); see also The Effects of Proposed Legislation at 245 (statement of Bernard Z. Brown).

30. The Tarnished Golden Door at 62.

the employee's rejection."\textsuperscript{32}

The concept of an employer sanctions law has also been criticized on the ground that the government will be without the necessary resources to implement the law. This concern recognizes the inability of the INS to enforce the Immigration and Nationality Act due to lack of resources,\textsuperscript{33} and the extensive federal budget cuts already accomplished by the administration.

The costs of implementing a national identification system will likely be prohibitive. The United States Comptroller General stated in a 1980 Report to the Congress that establishing an effective employment identification system "will cost billions of dollars and take years to become effective."\textsuperscript{34} Implementation of an employer sanctions law was termed a "drastic" solution to the country's immigration problems, and the costs in terms of "increased resources for law enforcement would be formidable."\textsuperscript{35} The staff of the Select Commission on Immigration and Refugee Policy estimated that it would cost $100 million to design an employer sanctions law, and $180 to $230 million annually to operate it.\textsuperscript{36}

A final set of concerns with the proposed employer sanctions law centers on the effects on undocumented workers themselves. Employers fined for the hiring of "unauthorized aliens" may simply pass these costs on to the workers in the form of lower wages, increased production, and/or a lowering of health and safety standards. Unscrupulous employers could further exploit undocumented workers by threatening to expose them to criminal liability under the bill for using fraudulent identification,\textsuperscript{37} unless they acquiesce to working conditions which violate existing labor laws. An employer sanctions law carries with in the "likelihood of driving unscrupulous employers [further] underground possible exacerbating exploitation [of undocumented workers.]"\textsuperscript{38}

The questionable effectiveness of an employer sanctions law balanced against the recognized risks involved suggest that less costly and socially disruptive measures should be explored. Such measures might include more vigorous enforcement of existing laws including minimum wage, occupational health and safety protections, and the Fair Labor Standards Act. Targetted enforcement in sectors of the labor market which historically utilize undocumented workers would tend to reduce the profitability of exploitation. This enforcement could determine

\textsuperscript{32} McDonnel Douglas Corp. \textit{v.} Green, 411 U.S. 792, 802 (1973).
\textsuperscript{34} U.S. Comptroller General, Prospects Dim for Effectively Enforcing Immigration Laws 11 (1980).
\textsuperscript{35} \textit{Id.} at i.
\textsuperscript{36} Select Commission Final Report at 343.
\textsuperscript{38} Select Commission Final Report at 384 (supplemental statement of Rose Matsui Ochi).
whether employers will continue hiring undocumented labor when made to abide by labor standards which citizen workers expect. In order to accomplish this goal the Government would have to make significant increases in the budgets of the Department of Labor's Employment Standards Administration and other enforcement agencies so that a much greater number of worksites could be monitored. Aggressive enforcement of existing labor laws would unquestionably benefit both citizen and immigrant workers without flirting with the potential pitfalls of a new and untested national employer sanctions law.

II
LIMITATIONS ON LAWFUL IMMIGRATION

Title II of the Simpson/Mazzoli bill, entitled Reform of Legal Immigration, effects radical changes in the system of eligibility for lawful permanent entry into the United States. These changes would reduce the ability of relatively poor and unskilled persons from achieving legal status, while expanding eligibility for semi-skilled and professional persons with moderate to high incomes. This refocusing of lawful immigration procedures would be accomplished at the expense of family reunifications.

As approved by the Senate, the Simpson/Mazzoli bill would create a world-wide ceiling on lawful immigration of 425,000 persons, including 350,000 for family reunifications and 75,000 for "independent immigrants." The "immediate relative" category would, for this first time, be limited by the worldwide ceiling on lawful immigration. Presently, "immediate relatives" could immigrate to the United States outside of any quota restrictions with only a short wait for a visa.

Since lawful immigration, other than refugee admissions, has been approximately 650,000 annually for the past few years, the placement of a world-wide ceiling of 450,000 per year will significantly reduce opportunities for legal migration. The key causes for migration are generally believed to be high wages and low unemployment in the United States relative to sending countries. Immigrants come to the United

40. "Immediate relatives" are the children under twenty-one years of age, spouses and parents of U.S. citizens, provided that, in case of parents, the citizen must be at least twenty-one years of age. 8 U.S.C. § 1151(b)(1976).
41. Id.
States primarily in order to obtain employment and for family reunification purposes. Historically, the official quota has not directly affected the number of immigrants entering the country, but only whether they enter lawfully or unlawfully. Reducing the total ceiling on lawful immigration, particularly for family reunification purposes, will likely result in an immediate jump in the numbers of persons entering and remaining in the United States without lawful immigration status.

Creation of the “independent immigrants” category was recommended by a majority of the members of the Select Commission on Immigration and Refugee Policy. The Select Commission took note of the “dwindling” number of visas made available in recent years to “nonfamily members” of United States citizens. The Commission felt that persons without family members in the United States should be given new opportunities to immigrate in order to serve the national interests of “economic growth with labor market protection and cultural diversity consistent with the national unity.” Senator Simpson has expressed the issue in this way:

[O]nly a small fraction of [immigrants] are individually admitted for qualities which are likely to benefit the Nation as a whole . . . Less than five percent even of new immigrants are certified by the Labor Department as not causing unemployment or adversely affecting the wages and working conditions of U.S. workers . . . If immigration is continued at a high level, but a substantial portion of these new persons and their descendants do not integrate fully into the society, they may well create in America some of the same social, political and economic problems which exist in the countries from which they have chosen to depart.

The “independent immigrant” category is meant to encourage the lawful immigration of those who possess qualities “which are likely to benefit the Nation,” not drive wages down and unemployment up, and who will not bring with them the social, political and economic problems faced by their home countries. As such, this category of immigrants would consist primarily of “aliens who are members of the professions

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45. Id. at 127.
46. Id. at 128.
47. 128 Cong. Rec. S2216 (daily ed. March 17, 1982).
holding doctoral degrees or aliens of exceptional ability[,] ... skilled workers[,] ... investors[,] ... [and other] nonpreference aliens."  

The new "independent immigrant" category does not alleviate "the pressures at hand" presented by migration demands of the Western Hemisphere in general, and Mexico in particular. While this new method of lawful immigration will allow greater numbers of doctors, scientists and persons ready to make investments of $250,000 to enter the United States, it would concurrently inhibit the ability of family members to reunite by reducing the visa numbers available to them. This will likely increase illegal migration on the part of poorer families.

The proposed law also provides that persons who enter the country legally, but fall out of status (generally having overstayed their visas), could no longer regularize their status while remaining in the United States. Under present law, a person who entered the country legally, and becomes eligible for lawful permanent resident status, may "adjust" his or her status if a visa is currently available (that is, the applicant for a visa faces no quota backlog). Persons entering the United States on student visas would also be precluded from adjusting their status in the United States under the new law. These restrictive provisions will encourage potential immigrants to remain in undocumented status due to the complexities and expenses involved in returning to the home country to obtain a visa at an American Embassy or consular office. Poorer persons from distant countries will be especially hard hit.

The Simpson/Mazzoli bill's revision of the lawful immigration system would facilitate the legal migration of professionals and investors with sufficient capital, while hampering the migration efforts of less skilled workers and those having family ties in the United States. Because the bill does not address the fundamental causes of migration, creation of the "independent immigrant" category will probably result in an increase in the illegal entry of persons presently eligible in categories facilitating family reunification. The "independent immigrant" category will do little to resolve the pressures for migration experienced in Mexico, Central America and the Caribbean.

III

TEMPORARY WORKER PROVISIONS OF THE BILL

The Simpson/Mazzoli bill's provisions for a temporary foreign work-
er program involve adverse consequences to both domestic and foreign labor, and may generate divisive political controversy.

Past temporary foreign labor programs were characterized by abusive employment practices. For instance, the Mexican Labor Program, formalized in August, 1942, involved about four million workers during its twenty-two year history. Rules and regulations promulgated to protect the civil and labor rights of these temporary foreign workers “were unenforced.” The employees were “captive workers who were totally subject to the unilateral demands of the employers.”

Despite concern for reducing migration to the U.S., the authors of the reform bill have nevertheless proposed to “revise the current temporary worker program . . . to create a special streamlined program for agriculture.” This streamlining of the law provides that employers demonstrating a need for temporary foreign labor would obtain official approval to hire foreign workers “within a reasonable period of time.”

While present law provides that temporary foreign workers may be hired only “if unemployed persons capable of performing such service or labor cannot be found in this country,” the proposed law would limit the geographical search for domestic workers by allowing the employment of foreign labor when domestic workers are unavailable “at the time and at the place needed to perform the labor or services. . .”

Several studies indicate that the employment of temporary foreign workers in agriculture adversely affects wages and working conditions. The Department of Labor has concluded that use of temporary foreign labor in agriculture tends to lower prevailing wage rates. A comprehensive agricultural prevailing wage survey conducted by the New York Department of Labor illustrates the harmful impact on wages and working conditions experienced as a result of the employment of these workers. This survey compared wage rates in areas where employers used temporary foreign workers and areas where domestic workers were used. Wages were consistently depressed in areas where employers relied upon temporary foreign labor. As recognized by the Department of Labor,

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57. Id. at S2217.
employers can make temporary workers work for lower wages and under depressed working conditions because they fear repatriation.\textsuperscript{62}

The West European guest worker programs might also serve as a warning to U.S. policy makers. While these programs were largely non-controversial during the 1950s and 1960s, they exploded in the 1970s as a socio-political issue.\textsuperscript{63} In Western Europe, "abuses of foreign workers . . . provoked protests that served to fuel xenophobic reactions."\textsuperscript{64}

While the use of guest workers in Europe encouraged the development of a subclass of workers and institutionalized discrimination, few of the workers ever left the host countries.\textsuperscript{65} A recent, extensive congressional study cautioned that if the temporary worker program is expanded, the lesson learned "from our twenty-two year experience with the bracero program and from the European guest worker experience is that the seriousness, complexity and far reaching consequences of such an undertaking can hardly be overestimated."\textsuperscript{66}

These concerns over an expanded temporary worker program should be balanced against the employer's demonstrated need for additional, imported labor. While the Department of Labor has previously required at least a ninety-day application period to provide the Department "sufficient time to recruit U.S. migrant workers,"\textsuperscript{67} the Simpson/Mazzoli bill allows only for an eighty day period.\textsuperscript{68} The Department has conceded that even a ninety day recruiting period would not be long enough to recruit domestic migrant workers from two supply states, Florida and Texas.\textsuperscript{69} Employers' need for temporary foreign labor cannot be accurately assessed until the Department of Labor devises an effective system for locating domestic workers, and allows for a sufficient recruitment period.

Employers will likely prefer foreign over domestic employees under an expanded temporary guest worker program. Temporary workers desiring to return to work in the United States have a strong incentive to please their employers, and are therefore "hard working and diligent."\textsuperscript{70} Former Secretary of Labor Ray Marshall has correctly stated that expansion of the temporary worker program "can only lead employers to

\begin{thebibliography}{9}
\bibitem{62} U.S. Department of Labor, Review of Rural Manpower Service 37 (1972).
\bibitem{63} Miller and Yeres, \textit{A Massive Temporary Worker Program for the U.S.: Solution or Mirage?} 14 (1979) (research paper for the World Employment Programme, Geneva).
\bibitem{64} \textit{Id.} at 15.
\bibitem{65} \textit{Id.} at 16.
\bibitem{66} Staff of Senate Comm. on the Judiciary, 96th Cong. 2d Sess., Report on Temporary Worker Programs: Background and Issues 120 (Comm. Print 1980).
\bibitem{69} 43 Cong. Rec. 10,307 (1978).
\end{thebibliography}
prefer such workers, to the detriment of low-skilled United States workers..."71

Congress should carefully evaluate the impact an expanded temporary foreign labor program would have on domestic and foreign workers before embroiling the country in the controversies inherent in such a program.

IV
POLITICAL ASYLUM AMENDMENTS TO THE LAW

While two recent court decisions recognize that political asylum applicants in the United States are entitled to due process guarantees,72 the authors of the reform bill seek to reduce the rights available to these applicants.73

Under existing law an alien may apply for asylum before an INS district director or immigration judge.74 The applicant must establish an unwillingness or inability to return to his or her home country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion.75 Pursuant to current regulations, an asylum application may be filed at any time before or during a deportation or exclusion hearing, or after completion of the hearing if the applicant can "reasonably explain" why the claim was not made earlier.76 The district director or immigration judge passing on the application must obtain the views of the State Department on any political asylum claim before adjudicating the application.77 Denials of political asylum can be reviewed by the Board of Immigration Appeals,78 and the United States Courts of Appeal.79

Under the proposed amendments of the Simpson/Mazzoli bill, bona fide refugees may never learn of their right to seek asylum in the United States. Current law provides that every person who "may not appear to the examining officer at the port of arrival to be clearly and beyond doubt entitled to land" is detained for an exclusion hearing before a

75. Id.
76. 8 C.F.R. §§ 208.3, 208.10, 208.11 (1982).
77. Id. at §§ 208.7, 208.10(b).
78. Id. at 236.7, 242.21.
special inquiry officer. The Simpson/Mazzoli bill proposed to allow for the summary exclusion of persons at ports of entry, unless they affirmatively request political asylum, or an examining officer determines that they have a “reasonable basis for legal entry . . .”. The initial examining officer would thereby possess discretion to either grant or deny entry into the U.S. based on his or her unreviewable notion of “reasonable basis”. Nothing in the proposed law would require the examining officer to inform the applicant for entry that he or she has a right to apply for political asylum, and that the assistance of counsel may be sought in this regard. This summary procedure will largely encourage INS agents to circumvent this nation’s obligation under the Protocol Relating to the Status of Refugees to refrain from unlawfully repatriating refugees.

Bona fide refugees might be rejected for entry into the country because of an inability to clearly articulate the basis for a political asylum claim due to language barriers or fear of authority. Alternatively, refugees might be turned back at the border for failure to have in their possession documentation supporting their asylum claims. The Handbook on Procedures and Criteria for Determining Refugee Status, prepared by the United States High Commissioner for Refugees (“UNHCR”), states in part that:

It should be recalled that an applicant for refugee status is normally in a particularly vulnerable situation . . . An applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule . . . A person, who, because of his experiences, was in fear of the authorities in his home country, may still feel apprehensive vis-a-vis any authority. He may therefore be afraid to speak freely and give a full and accurate account of his case.

The summary exclusion procedures proposed in the Simpson/Mazzoli legislation ignore the concerns of the UNHCR, and may readily result in the unlawful repatriation of bona fide refugees.

The proposed bill would also place a fourteen day time limit on the filing of an asylum application and a thirty-five day period within which to “perfect the application” following notice of initiation of deportation or exclusion proceedings. Fourteen days is an “insufficient period of

80. Id. §1225(b).
82. Protocol Relating to the Status of Refugees, Nov. 1, 1968, art. 33, 19 U.S.T. 6223, T.I.A.S. 6577, 606 U.N.T.S. 267 (1968). The treaty provides in pertinent part, “No contracting state shall expel or return . . . a refugee in any manner whatsoever to the frontiers or territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. 19 U.S.T. 6223, 6276.
time in which to expect that an alien will be able to secure legal counsel, and prepare and submit a formal asylum request with supporting documentation.”

In many cases documentation and statements from witnesses cannot be obtained within thirty-five days because these materials are located in a third country. These extraordinarily short time periods appear to be unduly harsh given that the asylum application may well involve life and death issues. They virtually invite violation of the Protocol Relating to the Status of Refugees which prohibits the repatriation of refugees to their home countries.

The problem created by these short time deadlines is not mitigated by the proposed exception which would apply only when “the alien can make a clear showing ... that changed circumstances in the country of the alien's nationality ... have resulted in a change in the alien's eligibility for asylum.” An asylum applicant unable to obtain the necessary documentation to perfect his or her claim within the thirty-five day limit, cannot later submit such materials unless they concern “changed circumstances” in the applicant's home country. An unavoidable delay in receiving relevant documentation is not sufficient ground upon which to offer them into evidence beyond the thirty-five day time limitation.

The rights of refugees are further endangered by the elimination of any affirmative role by the State Department in providing assessments for political asylum applications. Unlike present law, which requires that an advisory opinion be obtained from the Department prior to adjudicating any asylum application, the Simpson/Mazzoli bill merely provides that the Secretary of State shall make available to the INS “information on human rights in all countries”, and immigration judges “shall use such information [only] if available without delay to the proceedings ...” While the Attorney General must provide notice to the Secretary of State whenever an application for asylum is filed, the Secretary may, in his discretion, “submit comments to the immigration judge ... but the immigration judge shall not delay the proceeding in order to receive such comments.” Despite criticism that the State Department weighs foreign policy objectives in making recommendations to the INS on asylum claims, the Department can provide critical information to corroborate factual assertions made in asylum claims. The Simpson/Mazzoli bill unreasonably limits the role of the State Department in adjudicating asylum applications.

87. Id. at § 124(a)(3)(B)(i).
88. Id. at § 124(a)(3)(B)(ii).
89. Kasravi v. Immigration and Naturalization Service, 400 F.2d 675, 677, n. 1 (9th Cir. 1968).
Probably the most objectionable provision in the bill’s asylum section is the elimination of judicial appeals from denials of political asylum.\(^\text{90}\) Given that life and death matters are often at stake in the asylum process, a prohibition against seeking judicial review of arbitrary government action is unconscionable. Compared with the number of asylum applications adjudicated by the agency, only a minimal number of judicial appeals have ever been pursued.\(^\text{91}\) Eliminating judicial review will likely result in the increase in both federal court challenges under a constitutional habeas corpus theory and the time taken to reach final resolution of asylum claims.

In sum, the Simpson/Mazzoli bill’s proposals for changes in the asylum procedures will encourage circumvention of United States obligations under the United Nations Protocol Relating to the Status of Refugees. Rather than restricting the due process rights of asylum applicants, Congress should propose future amendments only after a careful examination of existing court decisions and standards set by the UNHCR concerning the rights of asylum applicants. It should devise a procedure which insures that asylum claims will be considered solely on their merits, and not on foreign policy issues between the United States and the applicant’s country.

V

THE PROPOSAL FOR AN AMNESTY

Section 301 of the Simpson/Mazzoli bill proposes a “legalization” program for certain immigrants.\(^\text{92}\) Unless the program’s provisions are amended, it is unlikely to succeed in removing the second-class status of the great majority of unlawful immigrants.

Under this plan, persons who enter the United States prior to January 1, 1977, and who “resided continuously in the United States in an unlawful status” since that date, may, in the discretion of the Attorney General, be granted lawful immigrant status.\(^\text{93}\) Persons who entered the United States prior to January 1, 1980, and resided in the country “continuously” since that date, may, in the Attorney General’s discretion, be granted “temporary residence” status.\(^\text{94}\) Persons applying for legalization will be denied the benefit if (1) they have been convicted of any felony or three or more misdemeanors committed in the United States,\(^\text{95}\) or (2) they are not admissible as immigrants pursuant to section 212(a)

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\(^{93}\) Id.
\(^{94}\) Id.
\(^{95}\) Id.
of the Immigration and Nationality Act. A large number of applicants for legalization would therefore not qualify and would face deportation upon the denial of their applications.

Rather than being an effective amnesty program, the Simpson/Mazzoli bill would place most applicants in temporary residence status, having the same effect as the implementation of a massive temporary worker program. Since the bill does not specify what type of proof an applicant would have to present to establish his or her date of entry into the United States and subsequent residency, it is quite probable that the standard of proof will be set very high for establishing lawful permanent status, while the level of proof to show temporary residence will be set low. Thus, few applicants would establish eligibility for permanent resident status, while a large number would be considered eligible for temporary resident status. In short, as viewed by some, the amnesty provisions amount to a temporary worker program in disguise.

Any amnesty program must be designed to offer a reliable and certain status to those taking the risk of stepping forward to apply for its benefits. A risk-free method of determining status is essential to a successful program. Short of this, few persons will apply for the benefits of the program for fear of family separation and deportation. A broad and clearly defined legalization is justifiable as being "in the interest of the United States . . ." Immigrants obtaining lawful status under the legalization program would contribute more to society once allowed to emerge from their underground existence. Exploitation on the job would decrease as legalized workers became more willing to avail themselves of protective labor legislation, Finally, the incentive for massive deportation drives, which often entail civil rights violations, would be reduced.

An amnesty program aimed at moving undocumented immigrants into the mainstream of society should also provide that those granted the benefit would pay all applicable taxes and receive a full range of essential government services. Anything short of this would leave the program's participants in a second-class status and resolve few of the problems posed by their presence in this country.

96. Id.
97. For example, immigrants would not qualify if in the Attorney General's opinion they are likely to become public charges, 8 U.S.C. § 1182(a)(15); if they are handicapped, id. § 1182(a)(7); or if they come to the U.S. to engage in any "immoral act", id. § 1182(a)(13) (homosexuality). Given this structure of the legalization program, Select Commission member Cruz Reynoso stated that only "2 percent" of the undocumented population would be attracted to apply for the program. Select Commission Final Report at 399.
100. Id. at 73.
VI
THE FUTURE OF IMMIGRATION REFORM

As an advanced industrial capitalist country, the United States is experiencing massive movements of capital, assets and labor. The internationalization of capital has a profound impact on the economies of less-developed countries, and directly contributes to the flow of labor from those countries to the United States. Meaningful immigration reform cannot take place without recognizing the emergence of a new corporate view of national boundaries, the role of United States foreign policies and investment practices, and the flight of capital abroad.

International migration is a global phenomena which has "characterized the behavior of populations for millennia." Globalists predict that the future holds calamitous drops in per capita food availability, deterioration of resources necessary for agriculture, an increasingly crowded world, and a widening income gap between rich and poor nations. While today some 800 million people live in conditions of absolute poverty, their lives dominated by hunger, ill health, and the absence of hope, by the year 2000 their number could grow to more than one billion. The pressures for migration will therefore likely remain high well into the end of this century.

In addition to recognizing these pressures for migration, Congress must understand the attitudes multinational corporations have towards national boundaries, as their transfer of capital and labor policies directly affect American workers. "For business purposes," says Jacques Maisonrouge, president of IBM World Trade Corporation, "the boundaries that separate one nation from another are no more real than the equator. They are merely convenient demarcations of ethnic, linguistic, and cultural entities." With global corporations viewing the world as one economic unit, migration policies can no longer be established in narrow, outdated, and nationalistic frameworks.

Comprehensive immigration reform must address not only the movement of labor, but also the movement of capital. The flight of capital and plant closings in the United States obviously have a direct impact on domestic employment. Further, United States laws which establish policies for foreign investment indirectly affect migration patterns through impacts on the economies of less-developed countries. In

103. Id. at 5.
countries heavily dependent upon one or two export commodities, United States investment practices causing recessions and higher unemployment probably increase pressures for migration.  

United States foreign policies which support certain repressive governments also play a role in causing migration to this country. In recent years large increases have occurred in the number of refugees seeking safe haven in the United States from El Salvador, Guatemala, Haiti and other countries where political freedoms are severely curtailed. Exacerbating this problem is the fact that such political repression is often accompanied by disastrous economic conditions. United States support and aid for such countries might be better linked to improvements in their human rights records. A firmer human rights policy would serve the national interest of reducing the large flows of refugees escaping repressive governments and seeking safety in the United States.

A realistic approach to immigration reform involves an evaluation of domestic and foreign policies. The present world situation "throws into serious question the assumption that international migration can [even] be controlled by domestic policy." Immigration and refugee policies must include multinational solutions, such as a reassessment of foreign aid and investment objectives, cuts in tariffs on principal developing-country exports, development of agricultural projects to increase food supplies and exports, and the like.

Meanwhile, Congress should seek to alleviate the social, political

106. The relevant questions are: how much do U.S.-based multinational corporations invest new capital into developing countries, how much do they stimulate economic growth, and to what extent do they extract profits? A 1970 U.N. study showed that the policy of international corporations has been to avoid the use of direct investment capital while maximizing access to and use of local capital. United Nations Commission Economica Para America Latina, Estrategia Industrial y Empresas Internationales: Posicion Relativa de America y Brasil 65 (1970). A 1973 study of multi-national corporation's investment practices in Guatemala, a major sending country for migrants entering the U.S., concluded that foreign businesses were financed "wholly or in part through internal [local] savings and not with additional external financing." G. Rosenthal, The Role of Private Foreign Investment in the Development of the Central American Common Market 235 (1973) (Paper prepared for the Adlai Stevenson Institute of International Affairs). Rosenthal also reports that between 1960 and 1970 new capital inflows to Central American increased by 344%, while total reported remittances (profits extracted) increased by 982%. Id. In sum, global corporate investment practices in less-developed countries have often led to negative economic development. A long-range solution to the U.S.' immigration problem must address how legislation might affect the foreign investment practices of global corporations in a manner designed to reduce (1) income differentials between U.S. and foreign workers, and (2) structural unemployment in the major sending countries.

107. See, e.g., The Foreign Assistance Act of 1961 § 502(B), 22 U.S.C. § 304 (1976) (no assistance shall be provided to countries which engage in a consistent pattern of gross violations of human rights). However, existing U.S. laws contain numerous exceptions which allow foreign assistance to governments regardless of their human rights records. See, e.g., id. § 2304(a)(2).


and economic problems created by the massive exploitation of undocumented immigrants living in the United States. Emergency measures could provide the immigrant community with greater access to protective labor legislation without fear of exposure to deportation. Access to vital government services, such as health care, should be available to all persons, regardless of immigrant status. Congress should adopt a broad and clearly defined amnesty program to resolve much of the present crisis.

VII
CONCLUSION

The Simpson/Mazzoli legislation would have little impact on stemming the flow of immigrants to the United States. It would tend to increase the legal migration of professionals and persons capable of making large investments here, while discouraging the lawful migration of poorer and less skilled persons. The ability of immigrants to reunite with close family members in the United States would be decreased by the proposed law. This would likely foster greater illegal migration into this country.

An employer sanctions law will not deter the hiring of undocumented immigrants, would prove costly, and might encourage racial and ethnic discrimination.

Before expanding the present temporary foreign labor program with its attendant social and political problems, Congress should develop a procedure ensuring that only employers demonstrating an actual need may hire additional, foreign workers.

The proposed bill's restrictions on the due process protections for immigrants seeking asylum will lead to violations of international rights of refugees, and could result in increased court challenges of asylum petition denials.

Congress should base immigration reform efforts on an understanding of the international causes of migration into this country, including the transfer of capital and effects of United States foreign policies.

The Simpson/Mazzoli bill ultimately "does not address the very difficult questions of how to control the flow of immigrants—both legal and illegal—into this country in a manner which is both fair and effective, and which protects the principle of family reunification in our immigration law."110