MIGRATION
LETTERS

VIEWPOINT:
Whither US immigration?

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Abstract

The US is the nation of immigration, with almost 20 percent of the world's international migrants and half of the unauthorized migrants in industrial countries. Debates over the best package of enforcement, legalization, and guest workers to deal with illegal migration continue to divide Americans and Congress. These differences sharpened in the run-up to elections in November 2016, exposing sharp differences between leading Republicans who want to deport unauthorized foreigners and build a wall on the Mexico-US border and leading Democrats who want to allow unauthorized foreigners to legalize their status and eventually become US citizens.

Keywords: US migration; unauthorised migrants; border; legalisation; enforcement

Introduction

The United States is a nation of immigrants unsure about the best migration policy for the future. With almost five percent of the world's people but 20 percent of the world's 244 million international migrants, the US is the major country of immigration. The UN reported 47 million international migrants in the US in 2015, four times more than Germany and Russia, which each had 12 million migrants (UN DESA, 2015). The US is alone among high-income countries in having a quarter of migrants who are unauthorized, some 11.3 million in 2014. What to do about these unauthorized foreigners has dominated policy debates over the past two decades.

The foreign-born are 14 percent of US residents. The US has a higher share of foreign-born residents than most European countries, but a lower share than Australia and Canada, where over 20 percent of residents were born outside the country.[1] The major sources of migrants to the US are different from other industrial countries as well. Over half of US migrants are from Latin America and a quarter are from Asia, while over half of migrants to Australia and Canada are from Asia.
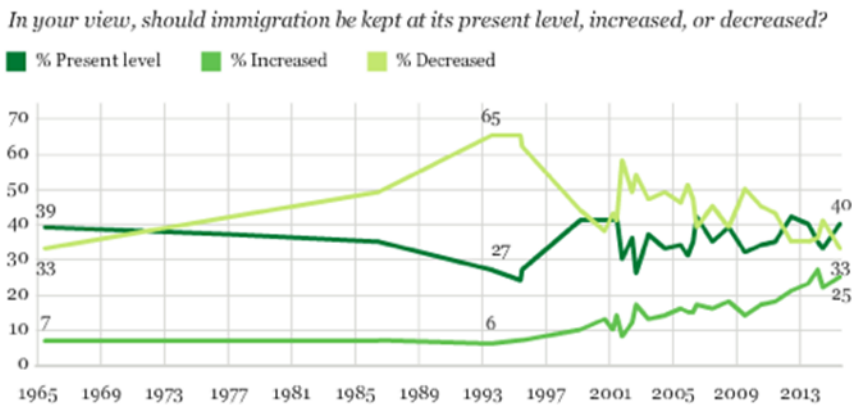
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[1] UN DESA reported that 28 percent of Australian and 22 percent of Canadian residents were born outside these countries in 2015.

Most Americans think that immigration is good for the US, but more want immigration reduced than increased, although the gap has narrowed in recent years. Pollster Gallup also found that most Americans believe it is "very important" or "extremely important" for the government to take steps to reduce illegal migration and to deal with the unauthorized foreigners in the US. Congress has held hearings and debated bills on how to accomplish these goals, but none became law, allowing illegal migration to take center stage when Republican presidential contender Donald Trump made the issue the centerpiece of his campaign in summer 2015.

Figure 1. Gallup: Should Immigration be Increased or Decreased, 1965-2014

In your view, should immigration be kept at its present level, increased, or decreased?

■ % Present level ■ % Increased ■ % Decreased

Source: http://www.gallup.com/poll/1660/immigration.aspx

This article explains the three major doors through which foreigners arrive in the US, the debate over what to do about unauthorized migration, and responses to the largest wave of newcomers in a century. Immigration is a federal responsibility, but there is unlikely to be any major immigration legislation enacted until 2017 at the earliest.

Three entry doors

Foreigners enter the US through three major doors: front, side, and back. The US admitted 990,500 front-door settler immigrants in FY13, the most recent data available, an average of over 2,700 a day (DHS, 2014). For the past several decades, most immigrants have been from Latin America, but in 2013 the number of Asian immigrants, 400,500, slightly exceeded the number from Latin America, 390,000. Mexico was the birthplace of more front-door immigrants than any other country, about 135,000, as many as from China and India combined.

The US has a family-oriented immigration system, meaning that two-thirds of all immigrants invited as permanent residents are admitted because a relative

in the US sponsored them, that is, the US-based relative asked the government to issue an immigrant visa to his or her relative. Two-thirds of family immigrants are spouses, children, and parents of US citizens who can immigrate without waiting. One-third are spouses and children of immigrants or more distant relatives, such as married and unmarried adult children of US citizens and their families, some of whom must wait years for immigrant visas. A sixth of immigrants are sponsored by US employers, and the remaining immigrants are refugees, diversity and other immigrants.[2]

Over half of all immigrants or green-card holders (immigrant visas used to be printed on green paper, and immigrants are still often called green-card holders) are already in the US when they receive immigrant visas, so that they adjust their status from temporary visitor, student, or from worker to immigrant. There were 173 million visitor admissions in FY13, but most involved Canadians and Mexicans entering the US for shopping or daily work. There were 61 million so-called I-94 admissions, meaning that a foreigner entered the US as a tourist, student, or worker and planned to stay from several weeks to several years, an average of 167,000 a day.

Unlike immigrants, side-door temporary visitors enter the US for a specific time and purpose. Most foreign visitors leave after a few weeks, months, or years, but some become immigrants by marrying US citizens or finding US employers to sponsor them. Many of the almost 900,000 foreign students enrolled in US colleges and universities stay in the US after graduation, sometimes as employees under Optional Practical Training programs that allow some foreign graduates of US universities to stay up to 36 months.[3] Others become temporary foreign workers with H-1B visas for up to six years.[4] A foreign student who begins as an undergraduate and earns a graduate degree before becoming an OPT intern and then an H-1B worker can be in a

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[2] A 1990 law makes 50,000 immigrant visas available each year to citizens of countries that sent less than 50,000 immigrants to the US during the previous five years; winners of visas are selected by lottery from 10 million to 15 million entries. Until 2013, Bangladeshis submitted more 10 applications than any other country. Today, Ethiopians, Egyptians, and Iranians submit many of the 15 million applications.

[3] In April 2008, USCIS extended from 12 to 29 months that foreign graduates of US universities with science, technology, engineering, or mathematics (STEM) degrees may remain in the US for study-related employment, and in March 2016 the maximum duration of OPT for STEM graduates was extended to 36 months. Many of the students in OPT jobs, whose number is not capped, are waiting for H-1B visas, whose number is capped. www.uscis.gov/eir/visa-guide/f-1-opt-optional-practical-training/f-1-optional-practical-training-opt

[4] The H-1B program makes it easy for most US employers to attest that they need foreigners with college degrees. It aims to protect US workers by limiting the number of visas to 65,000 a year, plus 20,000 for foreigners with advanced degrees from US universities, plus an unlimited number for nonprofits such as universities. Most US employers can obtain H-1B visas for foreign professionals without first trying to recruit US workers, and some have laid off US workers in order to hire H-1B workers. Most of the quota-limited H-1B visas go to outsourcers, often India-based firms that have some US employees and more abroad to do IT-work for US clients (Preston, 2015).

temporary status in the US for two decades, during which time many find US sponsors and become immigrants.

The third port of entry allows back-door foreigners to enter the US without inspection by eluding the Border Patrol or to enter legally but not abide by the terms of their visas, such as not departing as required or going to work without permission. About 55 percent of the 11.3 in 2014 million illegal, undocumented, or unauthorized foreigners entered without inspection and 45 percent arrived legally but violated the terms of their visas (Passel and Cohn, 2015a). The number of unauthorized foreigners peaked in 2007, and since the recovery from the 2008-09 recession has stabilized at about 11 million. The share of Mexicans among the unauthorized has fallen from almost 60 percent to just over half.

Figure 2. Unauthorized Migrants in the US, 1990-2014 (millions)
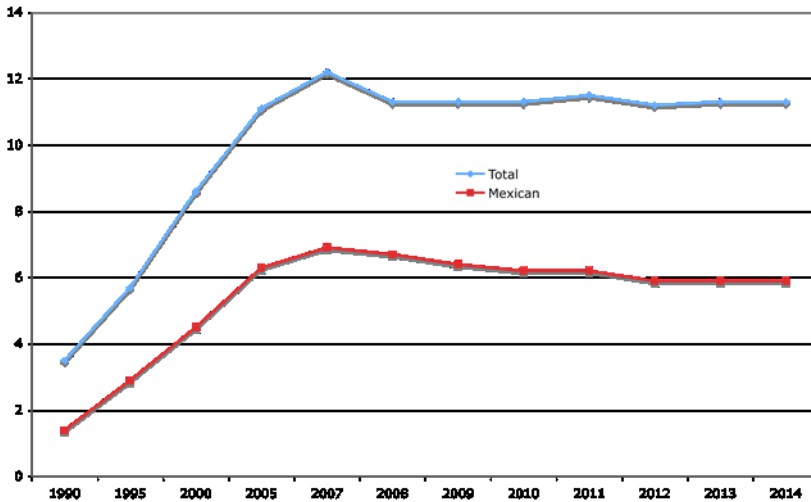
Source: Adapted from Passel and Cohn, 2015a

Almost three-fourths of unauthorized foreigners are in the US labor force, over eight million, making unauthorized workers over five percent of the 156 million-strong US workforce (Passel and Cohn, 2015b). Unauthorized workers are concentrated by geography, industry, and occupation, with especially heavy concentrations among farm workers employed in agriculture in California, laborers, drywallers, and roofers in construction in Nevada, and in low-wage service jobs in major cities, from lawn and gardening services to food preparation in restaurants. A quarter of US farm workers, a sixth of US janitors, a seventh of US construction workers, and a ninth of US food preparation workers are unauthorized (Passel and Cohn, 2015b).

One indicator of illegal immigration is how many foreigners are apprehended just inside the Mexico-US border, a number that has been falling. In FY2000, over 1.8 million foreigners were apprehended, an average of almost 5,000 a day. The number of apprehensions fell to less than 2,000 a day in

FY2011, and has continued to fall to less than 1,000 a day in recent years; there were 337,000 apprehensions in FY2015. The share of Mexicans among those apprehended, which was over 90 percent until 2008-09, is now 55 percent, reflecting less unauthorized Mexico-US migration and more unauthorized migration from Central America (Rural Migration News, 2016).

The unauthorized population in the US increased by an average of 1,000 a day between 2009 and 2014. However, the slowdown in newly arrived unauthorized foreigners, and the fact that more Mexicans in the US are returning to Mexico than are arriving from Mexico, means that many of the remaining unauthorized foreigners are settled in the US. Almost three-fourths of unauthorized adults have been in the US at least a decade, and 40 percent live with US-born children who are US citizens by birth (Passel and Cohn, 2015a).

Immigration debates

Each of the three major flows of foreigners to the US is controversial, raising questions about integration, labor market competition, and the rule of law. Immigrants sponsored by US relatives should have a relatively easy time integrating into the US, since their US-based relatives can help them to find housing and jobs and are legally responsible to support the immigrants they sponsor.[5] However, if the US relatives who sponsor immigrants have low levels of education and do not speak English, the relatives they sponsor may have difficulty finding jobs that pay enough to rise above poverty-level incomes.

Over half of US immigrants are from Latin America. Most have little education and are joining US relatives with little education. For this reason, many economists believe that the US should switch from a family-unification immigration selection system to an Australian- or Canadian-style point system and select immigrants whose personal characteristics make them likely to be successful in the US. Instead of giving 70 percent of immigrant visas to those with US relatives, they would give most immigrant visas to young foreigners with high levels of education, English, and US job offers (Orrenius, Zavodny, and LoPalo, 2014).

English is the key to upward mobility in the US labor market. Over 20 percent of US residents five or older speak a language other than English at home. Spanish is spoken at-home by two-thirds of those who do not speak English at home, followed by Chinese. Studies of immigrant integration find that today's immigrants are assimilating into American society as fast as previous immigrants, and learning English faster than those who arrived early in the 20th century (Waters and Gerstein, 2015). Half of immigrants report that they speak English "well," but the penalties for not knowing English are greater

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[5] Newly arrived settler immigrants are generally not eligible for federal welfare benefits until they work in the US for 10 years or become naturalized US citizens after five years. If an immigrant nonetheless receives federal welfare benefits, the US government can recoup any benefits paid from the immigrant's US-based sponsor.

in today's service economy than they were a century ago in an agricultural and manufacturing economy.

Uncertainty about immigration selection and integration amidst employer pleas for foreign workers prompts calls for new and expanded temporary worker programs. Such programs have long been controversial in a nation of immigrants, raising fears that range from "unfair" competition for US workers to backdoor immigration. A series of Mexico-US programs that admitted so-called Braceros to work on US farms between 1942 and 1964 is widely blamed for depressing US farm wages and sowing the seeds of future illegal Mexico-US migration, largely by developing a mutual dependence between rural Mexico and rural America that defied efforts to stop Mexico-US migration when the program was ended during the 1960s Civil Rights era (Martin, 2003). Expanding current or creating new guest worker programs for low-skilled workers, some fear, could depress the wages of similar US workers and again sow the seeds for future illegal migration.

There are different concerns about side-door foreigners with college degrees. The US had almost a million foreign students in 2014-15, so that five percent of students at US universities were foreigners on temporary visas. About 20 percent were from China, followed by 15 percent from India (IIE, 2015). Among foreigners studying for US degrees, there were slightly more graduate than undergraduate students, with over half of the graduate students in master's degree programs.[6]

Many consider foreign graduates of US universities to be the ideal immigrants, since they have completed a US course of study, know English, and are attractive to US employers. With US universities the gatekeepers to the US, and US employers the gatekeepers to the US labor market, both Republicans and Democrats have decried US policies that force some foreign graduates of US universities who want settle in the US to leave when they fail to find a sponsor who will give them an internship or a job.

The problem with the US system of student, guest worker, and immigrant is numbers. Imagine a funnel that begins with many foreign students, since there are no limits on how many can be admitted, and no limits on OPT employees after graduation. However, there are only 85,000 H-1B visas available for profit-seeking firms, and they and their families must compete for the 140,000 immigrant visas a year available to a wide range of foreigners seeking economic visas, from outstanding scientists to foreign investors. Foreigners who are in the US a decade or more can become very frustrated by the uncertainty and lengthy waits for an immigrant visa.

The H-1B program allows US employers to hire foreigners who have at least a bachelor's degree and who are filling US jobs that require such degrees (Martin, 2012). When the program was created in 1990, the assumption was

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[6] See: www.iie.org/Research-and-Publications/Open-Doors/Data/International-Students/Academic -Level/2012-14

that employers would request all available visas immediately to fill jobs in the expanding IT sector. Employer requests were expected to decline as more Americans earned computer-related degrees, but the opposite occurred. Employer requests climbed slowly until outsourcers appeared in the late 1990s, usually Indian-based firms that employ some H-1B workers in the US to understand the IT needs of a US firm, and then perform most of the firm's IT work in India.

Most US firms are not required to have their need for H-1B workers certified, meaning they do not have to try to find US workers before hiring H-1B foreigners. This allows them to lawfully lay off US workers and replace them with H-1B foreigners at lower wages, as Walt Disney and Southern California Edison did (Preston, 2015). Investigations of both firms found that they did not violate laws, since it is lawful for most US employers to lay off US workers and replace them with H-1B guest workers. Reforming the H-1B program is stalemated because those who want more protections for US workers have blocked proposals to simply increase the number of H-1B visas.

The US also has guest worker programs that admit low-skilled seasonal workers, called H-2A for farm workers and H-2B for nonfarm workers. There is no cap on the number of farm jobs that can be filled by H-2A foreigners, but there is a 66,000 a year cap on H-2B jobs. In recent years, about 140,000 farm jobs were certified to be filled by H-2A workers and 66,000 by H-2B workers (Martin, 2014). Both of these low-skilled guest worker programs are controversial, with employers calling for more "essential workers" to fill low-skilled US jobs and migrant advocates calling the conditions under which H-2A and H-2B workers are employed "close to slavery."[7]

The debate over guest workers mirrors broader debates over immigration. Employers say that foreigners fill the jobs US workers shun, and that the availability of guest workers helps to keep farms, restaurants, and ski resorts in business (NFAP, 2005). Critics say that there is no shortage of US workers, only a shortage of jobs offering decent wages and working conditions, and that US workers rightly shun jobs that demand hard work for low wages (Costa, 2016). Immigration reform proposals that would create new guest worker programs must balance the competing interests of employer and worker advocates on issues that range from how many visas should be available to the minimum wages and working conditions that must be provided to US and guest workers; none has yet won majority support.

Reform proposals

The major immigration reform proposals considered in Congress over the past decade include three key elements: more enforcement to deter illegal

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[7] The Essential Worker Immigration Coalition wants "a workable guest worker program that properly accounts for America's current and future workforce needs." (http://ewic.org/). The Southern Poverty Law Center calls the current low-skilled guest worker programs "close to slavery." (www.splcenter.org/20130218/close-slavery-guestworker-programs-united-states)

migrants, legalization for at least some of the unauthorized in the US, and new or modified guest worker programs. Disagreements involve exactly what to do in each of the three areas, and how to phase in each element.

The most recent attempt to enact comprehensive immigration reform was the Border Security, Economic Opportunity, and Immigration Modernization Act (S 744), approved by the Senate in June 2013. The enforcement sections of S 744 included billions of dollars to "secure" the Mexico-US border so that at least 90 percent of foreigners attempting to cross illegally would be apprehended. The number of Border Patrol agents would have doubled to 40,000, and the amount of fencing on the Mexico-US border would have doubled to 700 miles (Migration News, 2013).

In order to deter unauthorized foreigners, including foreigners who enter the US legally but work or overstay, employers would have had to begin checking all newly hired workers with the internet-based E-Verify system. This involves newly hired workers presenting proof of their right to work in the US and employers verifying this information with the federal government, as with credit card purchases.

The US has over seven million employers who hire over 50 million workers a year (many workers are hired multiple times). The major issue is what to do about mistakes, as when the federal government says someone is not authorized to work when they in fact are authorized. In such cases, should the federal government have to pay lost wages to workers who were wrongly denied jobs?

S 744's main legalization program would have allowed unauthorized foreigners who had been in the US at least two years to become "registered provisional immigrants," with the right to live and work in the US for six years. After six years, and if the president deemed unauthorized migration to be "under control," registered provisional immigrants who could prove that they were working and paying taxes could apply for regular immigrant status and become naturalized US citizens. S 744 included a separate and easier legalization program for unauthorized farm workers, who would have to prove that they did farm work as unauthorized foreigners to qualify. They could become regular immigrants in as little as three years if they continued to do farm work.[8]

The US now has three major temporary worker programs that admit over 200,000 guest workers a year. S 744 would have almost doubled the number of H-1B visas, and could have increased the number even more if employers requested all available visas. There would have been a new guest worker

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[8] Unauthorized farm workers who did at least 100 days or 575 hours of US farm work in the 24 months ending December 31, 2012 could have received cards that allowed them to live and work in the US after providing "just and reasonable" evidence of their qualifying farm work. Their spouses and children could have also become probationary immigrants.

To become immigrants, unauthorized farm workers who registered would have had to do at least 150 days of farm work a year for three years. When farm workers qualify for immigrant visas, so would their family members, so that the agricultural provisions of S 744 could have legalized up to 1.5 million farm workers and family members.

program for low-skilled workers, with the number admitted determined by a new Bureau of Immigration and Labor Market Research that studied labor market indicators, including unemployment rates and employer labor shortage complaints. Admissions which have begun at 200,000 a year, and could have doubled or tripled if employers requested all available visas and unemployment was low.

S 744 also included two new farm guest worker programs. One would have allowed farm employers to offer contracts to guest workers that tied them to their farms, while the other would have admitted foreign guest workers who "floated" from farm to farm. Farm employers would not have had to provide housing for floating guest workers, who could remain legally in the US as long as they were not unemployed more than 60 days. Instead of being administered by the US Department of Labor, the new programs would be administered by the US Department of Agriculture, which is perceived as friendlier to farm employers (Rural Migration News, 2013).

S 744 was controversial and not enacted into law. Restrictionists who believe that the first priority is to reduce illegal immigration decried legalization, calling it "rewarding lawbreakers." On the other hand, admissionists who believe that a nation of immigrants should integrate foreigners who have settled regardless of their legal status worried that the path to regular immigrant status and US citizenship was too arduous. Many employers worried that the new guest worker programs were not sufficiently large to fill vacant jobs, while unions charged that more guest workers would increase exploitation and hold down wages.

Immigration and politics

The trade-offs embodied in the Senate's S 744 proposal were satisfactory to most Democrats, whose main goal was a path to US citizenship for unauthorized foreigners. However, many Senate Republicans objected to "amnesty," and they persuaded the House to embrace a step-by-step or piece meal approach to immigration reform that begins with making enforcement more effective. The House dealt with several immigration enforcement bills, but none was enacted.

President Obama, who made comprehensive immigration reform a top domestic priority during his 2008 campaign, repeatedly told migration advocates that he did not have the power to change immigration law on his own. However, Obama in November 2014 used his executive authority to announce several immigration changes, including the Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) program, which would have allowed an estimated four million unauthorized foreigners with legal US children to receive three-year renewable work permits. Obama also expanded the 2012 Deferred Action for Childhood Arrivals (DACA) program, which has given a temporary legal status to almost 700,000

unauthorized youth who were brought to the US before the age of 16 and who graduated from high school.

If DAPA had gone into effect and DACA were expanded, at least half of the unauthorized foreigners in the US could have received a temporary legal status. However, Texas and 25 other states sued, alleging that that DAPA and expanded DACA would impose costs on states, and thus the US constitution prohibited Obama from implementing them by executive order. Federal courts agreed with the states, and DAPA has not gone into effect and DACA has not been expanded. The US Supreme Court is expected to rule on the lawfulness of Obama's DAPA and expanded DACA by mid-2016.

There has also been activity in the states. Beginning with Arizona's SB 1070 in 2010, many states enacted laws that require employers to use the federal E-Verify system to check the legal status of newly hired workers. SB 1070 and some other state laws went further, requiring state and local police to determine the legal status of potentially unauthorized persons encountered during traffic and other investigations, and making illegal presence in the state a crime. Initial reports suggested that unauthorized workers left states with such laws, but many of the provisions of state laws were later found unconstitutional and suspended, limiting their long-term effects.

Meanwhile, California and a dozen other states began to issue driver's licenses and to offer in-state reduced tuition to unauthorized foreigners, taking the opposite approach to protect and to integrate unauthorized foreigners. These states welcomed DAPA, and some began to offer English and other classes to unauthorized foreigners to speed their integration.

Unauthorized migration became a major issue in the Republican presidential campaign in summer 2015 when Donald Trump accused some illegal Mexicans of "bringing drugs. They are bringing crime. They're rapists. But some, I assume, are good people." Trump called for a wall on the Mexico-US border financed by fees paid by border crossers and an end to birthright citizenship, so that babies born to unauthorized parents in the US would no longer be automatic US citizens. Trump continued to take tough line on unauthorized migration, calling on the US government to halt the entry of Muslims after the terror attacks in Paris in November 2015, and is the frontrunner for the Republican presidential nomination in spring 2016.

Republicans are divided into three major camps. Trump represents the enforcement-only camp that wants to remove unauthorized foreigners from the US and build fences and walls on US borders. Senator Marco Rubio (R-FL), Jeb Bush, and more centrist Republicans support the additional enforcement and guest workers included in S 744's comprehensive immigration reform, but they would allow unauthorized foreigners to earn only a legal status in the US that might not result in US citizenship. A third camp, exemplified by House Speaker Paul Ryan (R-WI), is more libertarian, urging Republicans to move away from barriers on the border and instead wall off welfare benefits, that is,

admit migrants and let them work, but make it hard for them to receive welfare benefits.

Democratic presidential contender Hillary Clinton supported the enforcement, legalization, and guest worker package approved by the Senate in 2013, albeit with some changes. Clinton said that she would expand DAPA and DACA further if elected president, while Senator Bernie Sanders (D-VT) has expressed support for legalization but opposition to expanded guest worker programs.

What's next for US immigration?

Legal immigration seems likely to continue at a million a year, all signs point to a rising number of temporary visitors, especially those whose numbers are not capped such as students, and the unauthorized population is stabilizing in number and integrating into the US. The presidential campaign has kept the focus on illegal immigration, even though the number of unauthorized foreigners has stabilized. Some employers complain of too few workers, but most are adjusting to fewer newcomers eager for jobs.

There are unlikely to be any major immigration policy changes until 2017. When the immigration policy debate resumes, the major question is whether the emphasis will be on enforcement to prevent illegal migration or legalization of unauthorized foreigners in the US. The answer depends on the results of elections in November 2016.

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