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## Reinventing American Immigration Policy for the 21st Century

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# Reinventing American Immigration Policy for the 21st Century

## ABSTRACT

*With an estimated eleven to twelve million undocumented workers currently in the United States, the need for immigration reform is critical. As lawmakers grapple with the question of how to best meet the needs of the country, they should keep in mind that the United States is a country of immigration. If the U.S. reverts to a guest worker program like that proposed by the Bush administration, it should expect the results that history suggests—worker exploitation, falling wages, deteriorating working conditions, and discrimination. However, proposals calling for immediate permanent legal status also fail to completely address the needs of the country because the United States is no longer the developing country it once was. Therefore, a fundamentally new policy is likely necessary to address the number of undocumented workers in the United States as well as the needs of the country. One such policy would allow guest workers to obtain permanent legal status through a points program that would award points for achievements that promote both social and economic integration, and thus preserve the melting pot.*

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## I. INTRODUCTION

As the United States juggles with the idea of immigration reform, one of the most fundamental principles of the United States is being threatened—the notion of the melting pot. Since elementary school, many U.S. students have learned that “America” has welcomed immigrants from around the world and that the success of this country has been built on the hard work of all Americans, including immigrants. However, with many proposals calling for a guest worker program,<sup>1</sup> it is unclear whether the melting pot can survive. Thus, when drafting proposals for reform, legislators should recognize that the implications of reform affect not only how foreign citizens enter this country, but also how the U.S., as a country, perceives itself.

In addition, legislators should acknowledge that they are not blindly embarking down a road to change. During and after World War II the United States experimented with a guest worker program, as have many other countries. The current proposals should be compared with programs of the past. Such comparisons are liable to reveal the very results, both positive and negative, that the United States can expect if it enacts such a program. But even if a guest worker program is not the best solution, it should be recognized that proposals calling for immediate permanent legal status are also not free from problems. By looking to history and considering the needs of the country, the U.S. may discover that the ideal solution requires a fundamentally new policy, rather than a slightly modified old policy.

Part II of this Note discusses the immigration history of the both the United States and Germany, and why the history of Germany may provide an excellent lesson for the United States. In addition, the section describes two immigration reform proposals that have been offered in the United States—one being the President’s guest worker proposal and the other being a congressional representative’s proposal for permanent legal status for immigrants. Part III provides an in-depth analysis of the proposals discussed in the previous section. The positives and negatives of each policy are highlighted. Finally, Part IV sets forth a solution to the immigration reform controversy that persists in this country. This solution attempts to offer a compromise between guest-worker and permanent-legal-status proposals. Ultimately, its objective is to ensure that immigration reform goals are met without endangering fundamental ideas regarding immigration into the United States.

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1. See *infra* Part II.B (discussing alternative proposals of immigration reform in the United States).

## II. AN OVERVIEW OF IMMIGRATION POLICY AND CALLS FOR REFORM

A. *The Changing Face of Immigration: Past and Present Immigration Policy in the United States and Germany*

With imminent change to U.S. immigration policy on the horizon, the evolution of German immigration law should not be ignored in the United States. In several respects, the experiences of Germany are not so different from those of the U.S.<sup>2</sup> First, “[a]mong advanced industrialized countries, Germany and the United States have the highest immigrant populations.”<sup>3</sup> Second, Germany and the United States are two of the largest industrialized economies in the world, and have experienced rapid population growth in the last century.<sup>4</sup> Third, both Germany and the United States have, at times, relied heavily on foreign workers during labor shortages.<sup>5</sup> Fourth, “the national backgrounds of immigrants who filled the labor vacuums changed over time” in both countries.<sup>6</sup> In the United States, Hispanic and Asian immigrants—rather than European immigrants—now account for the majority of the immigrant population; in Germany, Turkish immigrants have replaced traditional Polish and Italian immigrants.<sup>7</sup> Finally, tensions have arisen in both Germany and the United States with respect to foreign workers and immigrants.<sup>8</sup> Therefore, when analyzing the current immigration reform proposals in the United States and attempting to find a solution, it is helpful to compare and learn from Germany’s experiences.

1. The United States
  - a. Immigration Policy

The reference to the United States as a “melting pot” highlights the common notion that the United States is a country of immigration. While some may question the validity of this today, it

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2. Francis Gabor & John B. Rosenquest IV, *The Unsettled Status of Economic Refugees from the American and International Legal Perspectives—A Proposal for Recognition Under Existing International Law*, 41 TEX. INT’L L.J. 275, 289 (2006).

3. *Id.*

4. *Id.* at 289–90.

5. *Id.*

6. *Id.* at 290.

7. *Id.*

8. *Id.* at 290–91.

was certainly true during the early years of nationhood.<sup>9</sup> For approximately one hundred years, foreign settlers were offered almost unrestricted access to the country.<sup>10</sup> This policy, while necessary to meet the demands of a growing nation, was also extremely popular among those already living in the United States.<sup>11</sup> In fact when policymakers passed legislation in 1798 that allowed for the deportation of dangerous aliens, the public reacted negatively; ultimately, the bill was not renewed beyond its initial two-year term.<sup>12</sup>

The preference for unrestricted immigration began to shift in 1875 with the passage of legislation that “barr[ed] convicts and prostitutes from entering the country.”<sup>13</sup> The enactment of similar legislation continued through the end of the nineteenth century and the beginning of the twentieth century. In 1882, legislation was passed that required immigrants to pay a fifty-cent head tax and prohibited lunatics, convicts, and paupers from entering the country.<sup>14</sup> By the mid to late 1880’s, legislation was enacted that limited the inflow of low-wage workers in order to protect the domestic labor supply.<sup>15</sup> Additional legislation passed in 1891 prevented “idiots” and diseased individuals from entering the country and permitted the deportation of those individuals who were in the country illegally.<sup>16</sup> By 1921, a quota system was introduced in the United States to restrict immigration by nation of origin.<sup>17</sup> Changes to this quota system continued throughout the first half of the twentieth century, and ultimately culminated in the enactment of the

9. Sheila Jackson-Lee, *Why Immigration Reform Requires a Comprehensive Approach That Includes Both Legalization Programs and Provisions to Secure the Border*, 43 HARV. J. ON LEGIS. 267, 268 (2006).

10. *Id.*

11. *Id.*

12. *Id.* at 268–69. See Alien Enemies Act, ch. 58, 1 Stat. 570, 570–71 (1798) (authorizing that “it shall be lawful for the President of the United States . . . to order all such aliens as he shall judge dangerous . . . to depart out of the territory of the United States . . .”).

13. Jackson-Lee, *supra* note 9, at 269. See Act of Mar. 3, 1875, ch. 141, § 5, 18 Stat. 477, 477–78.

14. Act of Aug. 3, 1882, ch. 376, 22 Stat. 214, 214.

15. See, e.g., Act of Feb 23, 1887, ch. 220, 24 Stat. 414 (amending the prior act to prohibit the importation and immigration of foreigners and aliens under contract or agreement to perform labor in the United States); Act of Feb. 26, 1885, ch. 164, 23 Stat. 332 (prohibiting the importation and migration of foreigners and aliens under contract or agreement to perform labor in the United States).

16. Act of Mar. 3, 1891, ch. 551, 26 Stat. 1084, 1084, 1086.

17. See Emergency Quota Act, ch. 8, 42 Stat. 5 (1921) (limiting the annual number of immigrants who could be admitted from any country to three percent of the number of people from that country already living in the United States in 1910).

Immigration and Nationality Act (INA) in 1952.<sup>18</sup> The INA is the basis for the quota system that persists today.<sup>19</sup>

b. Migrant Worker Programs

World War II created “domestic labor shortages” and “a need for migrant workers.”<sup>20</sup> As a result of this need and increasing pressure from U.S. growers, the Immigration Service and the Departments of State, Labor, and Agriculture entered into an agreement with Mexico, birthing the *Bracero* Program.<sup>21</sup> Under the original Bracero Program, the United States government contracted directly with “*braceros*” (Mexican migrant workers).<sup>22</sup> These contracts required the United States to pay transportation, living, and reparation expenses, and guaranteed *braceros* that they would be paid at the same wage rate as domestic workers.<sup>23</sup> The Program was intended to end when the war ended.<sup>24</sup> However, it was not until 1963 that the Program came to an end.<sup>25</sup> At the conclusion of the War, the demand for *braceros* continued; eventually, *braceros* began to contract directly with U.S. growers rather than the government.<sup>26</sup> The Korean War only fueled demand as labor shortages became a concern yet again.<sup>27</sup> However, the program was ultimately forced to end because of the adverse affect that it was having on domestic workers and the negative public reaction that resulted when the living conditions of migrant workers were revealed.<sup>28</sup>

Despite the conclusion of the *Bracero* Program, migrant workers continued to be welcome in the United States<sup>29</sup>: “[t]he Bracero Program was replaced in part by the H-2 visa for temporary workers, which allowed employers to hire workers from abroad for both

18. See Immigration and Nationality Act, Pub. L. No. 82-414, 66 Stat. 163 (1952) (codified in various sections of 8 U.S.C. and 18 U.S.C. § 1429) (continuing to restrict immigration into the United States); Immigration Act of 1924, ch. 190, 43 Stat. 153 (limiting the number of immigrants who could be admitted from any country to two percent of the number of people from that country already living in the United States in 1890).

19. Jackson-Lee, *supra* note 9, at 269.

20. Kristi L. Morgan, *Evaluating Guest Worker Programs in the U.S.: A Comparison of the Bracero Program and President Bush's Proposed Immigration Reform Program*, 15 LA RAZA L.J. 125, 127 (2004).

21. *Id.*

22. *Id.* at 129.

23. *Id.* at 129–30.

24. *Id.* at 127.

25. *Id.* at 129.

26. *Id.* at 130.

27. *Id.* at 127.

28. *Id.* at 129.

29. Alexandra Villarreal O'Rourke, *Embracing Reality: The Guest Worker Program Revisited*, 9 HARV. LATINO L. REV. 179, 181 (2006).

agricultural and non-agricultural jobs.”<sup>30</sup> In order to obtain an H-2 visa, a foreign worker must show that the job is “temporary or seasonal,” and that it cannot be filled “with qualified workers from the United States.”<sup>31</sup> Under the H-2 visa system, visas are “employer-specific,” and therefore workers depended upon continued employment with the specified employer in order to remain in the country.<sup>32</sup> The H-2 visa program issues approximately 100,000 visas per year.<sup>33</sup> In 2004, the entire supply of visas for the year was issued by February 1.<sup>34</sup>

## 2. Germany

### a. Immigration Policy

The immigration policy of Germany is traceable to the birth of the German state.<sup>35</sup> The emergence of the German nation-state resulted from the unification of numerous small independent states that shared a common language and culture.<sup>36</sup> Thus, the very foundation of the country rested in the idea of cultural homogeneity.<sup>37</sup> This belief likely influenced the 1913 Citizenship Act.<sup>38</sup> This Act followed a policy of *jus sanguinis*, and thus, awarded citizenship based on descent.<sup>39</sup> Therefore, the primary way to obtain German citizenship was by proof that one or both parents were German citizens.<sup>40</sup> Arguably, this policy was race-neutral because it awarded citizenship to any child “born to a German parent, irrespective of the

30. *Id.* In addition to the H-2 visa, three other categories of visas currently permit temporary guest workers to enter the United States. Tory A. Cronin, *The Wrong Solution: An Examination of President Bush’s Proposed Temporary Worker Program*, 7 SCHOLAR 183, 194–96 (2005). The H1-B visa allows temporary workers to enter the country in order to perform “services in a specialty occupation.” *Id.* at 195. Generally, workers who receive H1-B visas are highly educated and well trained. *Id.* The L-1 visa is available to foreign workers who are working for “an organization that has a parent, subsidiary, affiliate, or branch in the United States.” *Id.* These workers are “intra-company transferees.” *Id.* Furthermore, these workers must be performing “managerial or executive services, or services that require specialized knowledge.” *Id.* Finally, the O-1 visa is available to foreign workers who are able to show “an extraordinary capacity in the sciences, education, business or athletics.” *Id.* at 196.

31. Cronin, *supra* note 30, at 195.

32. O’Rourke, *supra* note 29, at 182.

33. *Id.*

34. *Id.*

35. Helen Elizabeth Hartnell, *Belonging: Citizenship and Migration in the European Union and in Germany*, 24 BERKLEY J. INT’L L. 330, 374–75 (2006).

36. *Id.*

37. *Id.* at 374.

38. *Id.* at 375.

39. *Id.*

40. See Reichs-und-Staatsangehörigkeitsgesetz [Citizenship Act], July 22, 1913, RGBl. I. at 583, § 3 (F.R.G.) (defining the requirements of the acquisition of citizenship).



'ethnicity' of the citizen parent."<sup>41</sup> However, because children born in Germany to foreign parents did not become German citizens, there was no real mechanism for foreigners to become German citizens and thus give birth to more German citizens.<sup>42</sup>

The 1913 Citizenship Act survived both World Wars and significant foreign immigration. It was not until 1999 that the Citizenship Act was amended by the Citizenship Reform Act.<sup>43</sup> The Citizenship Reform Act does not completely eliminate the *jus sanguinus* principle for granting citizenship; however, it does provide a means for those born on German soil to foreign parents to become German citizens, provided that their parents meet certain conditions.<sup>44</sup> One such condition is that one parent must have been a legal resident of Germany for at least eight years at the time the child is born.<sup>45</sup> The Citizenship Reform Act also provides simplified means for foreigners to become naturalized.<sup>46</sup> Legal residence for at least eight years is required, however, along with the satisfaction of other criteria.<sup>47</sup>

While the above Acts concern German citizenship rather than immigration, they were both in effect until 2004. Germany long held that it "[was] not a country of immigration."<sup>48</sup> Consequently, there was no real legislation in Germany designed to deal specifically with immigration until the Immigration Act was passed in 2004.<sup>49</sup> Thus, all foreign individuals entering Germany remained foreigners unless they were able to obtain citizenship under the 1913 Citizenship Act or its amended version. For the most part, such individuals came to Germany through its guest worker program, and therefore were subject to regulation.<sup>50</sup>

#### b. The *Gastarbeiter* Program and Migration to Germany

Despite its nearly non-existent immigration policy, "Germany became one of the world's largest immigration-receiving countries during the second half of the twentieth century."<sup>51</sup> The first major wave of immigration into Germany occurred in the early 1960's

41. Hartnell, *supra* note 35, at 376.

42. *Id.*

43. *Id.*

44. Staatsangehörigkeitsreformgesetz [Citizenship Reform Act], July 15, 2002, RGBI. I. at 1618, § 4 (F.R.G.).

45. *Id.*

46. *Id.* § 8.

47. *Id.* § 10.

48. Hartnell, *supra* note 35, at 377.

49. See discussion *infra* Part II.A.2.iii.

50. Hartnell, *supra* note 35, at 384.

51. *Id.*

through the early 1970's in the wake of World War II.<sup>52</sup> During this period, "Germany needed workers. Turks needed work."<sup>53</sup> Thus, the German government invited Turkish *gastarbeiter* (guest workers) to come to Germany and perform many of the jobs that Germans simply did not want.<sup>54</sup> Consequently, large numbers of poorly educated, young Turkish men poured into Germany.<sup>55</sup> These *gastarbeiter* were intended to remain in Germany for only a short period of time and were then expected to return to their home country when their work was completed.<sup>56</sup> But rather than return home to their families, the second wave of immigrants into Germany brought the families of *gastarbeiter* with them.<sup>57</sup> Thus, a short term program to aid in the rebuilding of Germany following World War II resulted in the long term establishment of Turkish foreigners in Germany.

### c. Current Immigration Policy in Germany

On January 1, 2005, Germany's Immigration Act (*Zuwanderungsgesetz*) came into effect.<sup>58</sup> While "[t]he Immigration Act has been reported as Germany's 'first immigration law,' . . . it is more accurate to say that it is Germany's first comprehensive legal framework for immigration."<sup>59</sup> The Act is a broad piece of legislation that adds new laws, repeals old laws, and amends several existing laws.<sup>60</sup> With respect to guest workers, the Residence Act (*Aufenthaltsgesetz*) is of greatest importance.<sup>61</sup> The Residence Act creates two residence permits for foreigners wishing to enter the country: a temporary residence permit and a permanent settlement permit.<sup>62</sup> Eligibility for either type of residence permit depends upon the satisfaction of numerous criteria.

The Residence Act allows temporary residence permits to be issued for four main purposes: to allow individuals to pursue educational endeavors, to allow individuals to pursue economic activity, to grant individuals humanitarian relief, and to reunite families.<sup>63</sup> Temporary residence permits for educational purposes

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52. Colin Nickerson, *A Lesson in Immigration: Guest Workers Experiments Transformed Europe*, BOSTON GLOBE, Apr. 19, 2006, at A1.

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. Cem Ozdemir, *Germany's Integration Challenge*, 30 FLETCHER F. WORLD AFF. 221, 222 (2006).

59. Hartnell, *supra* note 35, at 386.

60. *Id.* at 387.

61. *Id.*

62. Aufenthaltsgesetz [Residence Act], June 30, 2004, BGBl. I at 721, §§ 7, 9 (F.R.G.), available at <http://www.zuwanderung.de/english/downloads/aufenthgengl.pdf>.

63. *Id.* §§ 16–36.

may be granted to allow foreign students to enter the country for a two-year period to study at a university or other comparable institution, to participate in a language program, or to attend a basic or advanced industrial training program.<sup>64</sup> These permits are extendable, provided that the student again satisfies the permit requirements.<sup>65</sup>

Temporary residence permits may be granted for economic purposes when a foreigner is "taking up employment" in the country and "a concrete job offer exists."<sup>66</sup> Such a permit is also available when an individual is self-employed and "an overriding economic interest or a special regional need applies, the activity is expected to have positive effects on the economy and personal capital on the part of the foreigner or a loan undertaking is available to realize the business idea."<sup>67</sup> A residence permit for self-employment purposes will generally be granted when the individual has at least one million Euros to invest, with such investment creating at least ten jobs.<sup>68</sup> In addition, temporary residence permits are available for humanitarian purposes or in family-reunification situations; however, these sections are less applicable to the current debate with respect to immigration reform in the United States.<sup>69</sup>

In order to qualify for a permanent settlement permit, the Residence Act requires that a foreigner first have a temporary residence permit for at least five years.<sup>70</sup> In addition, eight other requirements are set forth, some of which include a secure livelihood, secure employment, contributions to the pension system, adequate knowledge of the German language and the legal and social systems, and adequate housing.<sup>71</sup> The five-year-residence permit requirement, along with the language and legal and social systems requirements, may be waived if the individual has successfully completed the integration program discussed below.<sup>72</sup> In addition, permanent settlement permits may be available for "highly qualified foreigners" who are "scientists with special technical knowledge, teaching personnel in prominent positions or scientific personnel in prominent positions, or specialists and executive personnel with special personal

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64. *Id.* §§ 16–17.

65. *Id.* § 16.

66. *Id.* § 18.

67. *Id.* § 21.

68. *Id.*

69. *See id.* §§ 22–36 (describing requirements for temporary residence permits on humanitarian and family reunification grounds).

70. *Id.* § 9.

71. *Id.*

72. *Id.*

experience who receive a salary corresponding to at least twice the earnings ceiling of the statutory health insurance scheme.”<sup>73</sup>

As noted, the Residence Act creates an integration program in Germany. Integration is provided for through integration courses that focus on the German language, legal system, culture, and history.<sup>74</sup> The courses are available to individuals who have received a temporary residence permit for the first time on employment, humanitarian, or family reunification grounds, or to individuals who have been granted a permanent settlement permit.<sup>75</sup> However, eligibility to attend is limited in some situations,<sup>76</sup> and attendance is required only where an individual cannot communicate in German at a basic level or the government has requested his attendance based on the availability of a course nearby.<sup>77</sup>

### B. *Proposals for Immigration Reform in the United States*

#### 1. The Bush Administration’s Proposal

The Bush administration has proposed a solution to the current immigration situation in the United States. The administration’s proposal relies heavily on a temporary worker program, which appears to be a return to the *Bracero* Program days.<sup>78</sup> The proposal would allow “immigrants . . . to enter or remain in [the United States] for a limited period of time, provided that they paid a registration fee and worked for a willing U.S. employer.”<sup>79</sup> These temporary workers would only be permitted to renew their status one time.<sup>80</sup> After the renewal period expired, temporary workers would be required to return to their home country.<sup>81</sup> Current undocumented workers would be able to remain in the country under the temporary worker program if they identified themselves during what would be considered an initial grace period.<sup>82</sup> However, after that grace period expired, only individuals outside the United States would be permitted to participate in the Program.<sup>83</sup>

In addition to the guidelines governing the temporary workers, the Bush administration proposal also would require federal authorities to work more diligently to seek out and punish those U.S.

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73. *Id.* § 19.

74. *Id.* § 43.

75. *Id.* § 44.

76. *Id.* § 44(3).

77. *Id.* § 44(a).

78. Jackson-Lee, *supra* note 9, at 275.

79. *Id.*

80. *Id.* at 276.

81. *Id.*

82. *Id.* at 275–76.

83. *Id.*

employers who hire undocumented migrant workers.<sup>84</sup> American employers who are considering hiring temporary workers would be required to make “every reasonable effort to find a U.S. citizen to fill the job in question” before hiring a guest worker.<sup>85</sup> Thus, the Bush administration’s proposal has “two general purposes”: “[T]o match searching employers with willing workers and to allow those working illegally in the country to ‘come out of hiding’ and participate legally in the workforce and society.”<sup>86</sup> However, some believe that,

[w]hile those purposes sound legitimate, evaluated in the context of the Bracero Program, it seems that they really amount to providing a cheap labor source for employers and to monitoring illegal immigration, both of which were reasons behind the first government sponsored migrant worker plan.<sup>87</sup>

In the wake of such opinions, other proposals have arisen that attempt to resolve the current immigration issues without reverting to guest worker programs.

## 2. An Alternative Proposal

In addition to the Bush administration’s proposal for immigration reform, several other plans have been suggested.<sup>88</sup> One such plan is Representative Shelia Jackson-Lee’s “Save America Comprehensive Immigration Act” (SACIA).<sup>89</sup> As its name suggests, Jackson-Lee’s proposal is a comprehensive reform that addresses not only migrant workers, but also asylum seekers and refugees.<sup>90</sup> With respect to migrant workers, SACIA has three main components: (1) “Earned Access to Legalization”; (2) “Employee Protections”; and (3)

84. *Id.* at 275.

85. *Id.* at 276.

86. Morgan, *supra* note 20, at 134.

87. *Id.*

88. See O’Rourke, *supra* note 29, at 185–94 (discussing the McCain-Kennedy Proposal to amend the Immigration and Nationality Act and the alternative Cornyn-Kyl proposal). The McCain-Kennedy proposal is similar to that of the Bush administration because it too essentially provides for a guest worker program. *Id.* at 185–87. However, unlike the administration’s proposal, the McCain-Kennedy plan does not require the matching of workers and employers. *Id.* at 185. It does, however, provide a method for foreign workers living in the United States prior to the adoption of the program to gain permanent residency. *Id.* at 187. While the Cornyn-Kyl proposal is referred to as an alternative, it is not vastly different from the McCain-Kennedy plan. *Id.* at 188–89. It also offers a guest worker program with the most significant difference between the two plans relating to the treatment of undocumented workers. *Id.* at 189. Under the Cornyn-Kyl plan, all undocumented workers would be required to leave the United States and apply for a visa to return while in their home country. *Id.*

89. Jackson-Lee, *supra* note 9, at 279.

90. *Id.* at 283.

“Family Reunification.”<sup>91</sup> Unlike the Bush Administration’s proposal, the focus of Jackson-Lee’s proposal is not temporary access, but rather permanent legal status.<sup>92</sup>

Under the Earned Access to Legalization component of SACIA, not all undocumented workers would be permitted to remain in the United States after enactment.<sup>93</sup> Unlike the Bush proposal, which provides for an initial grace period for migrant workers regardless of how long they had been in the country,<sup>94</sup> Jackson-Lee’s proposal “only provide[s] access for undocumented immigrants who have lived in the United States for more than five years.”<sup>95</sup> Thus, Earned Access to Legalization awards those who have been in the country illegally for the longest period of time.

SACIA introduces Employee Protections to fight the exploitation of un-documented workers and protect domestic workers.<sup>96</sup> Jackson-Lee contends that because undocumented workers are “[u]nder constant threat of government expulsion, [they] are being forced to accept reduced wages and benefits.”<sup>97</sup> Therefore, SACIA would require a comprehensive study on the “exploitation of undocumented workers by employers.”<sup>98</sup> This study would provide the basis upon which the government would act to combat the problem.<sup>99</sup> Jackson-Lee claims that SACIA would allow immigrant workers to take advantage of the benefits of union membership and collective bargaining.<sup>100</sup> With only “guest worker status,” workers could still face threats from their employers because employers would have the power to revoke a worker’s legal status.<sup>101</sup> Thus, guest workers might believe that union action would result in employer retaliation, and ultimately, deportation.<sup>102</sup>

Jackson-Lee indicates that collective action and union membership would not only benefit immigrant workers, but also domestic workers.<sup>103</sup> With collective bargaining, immigrant and domestic workers could “stand side-by-side” when negotiating, which would result in similar contracts for all.<sup>104</sup> No longer would immigrant workers be accepting extremely low wages to the detriment of domestic workers. In addition, SACIA would “impose a

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91. *Id.* at 279–81.

92. *Id.* at 279–80.

93. *Id.* at 279.

94. *Id.* at 275–76.

95. *Id.* at 279.

96. *Id.* at 280.

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

ten percent surcharge on fees collected for employment based permanent resident status petitions.”<sup>105</sup> The funds generated by this surcharge would then be used to create “employment-training programs” for those domestic workers who are particularly affected by immigrant workers.<sup>106</sup> Furthermore, SACIA would ensure that domestic workers who participated in “employment-training programs” were given preference over foreign workers.<sup>107</sup>

The final component of SACIA related to migrant workers addresses Family Reunification.<sup>108</sup> This component calls for two areas of reform.<sup>109</sup> First, it would revise the INA such that “minor criminal offenses and technical violations of the INA” would no longer be grounds for removal.<sup>110</sup> Second, SACIA would allow “relatives of permanent residents to enter the United States and await the processing of a visa petition here” rather than in their home country.<sup>111</sup> Because there is such a severe backlog of individuals waiting for visas, SACIA plan would allow for family reunification far sooner than is currently possible.<sup>112</sup>

#### IV. A CRITICAL LOOK AT THE PROPOSALS FOR IMMIGRATION REFORM

##### A. *The Objectives of Immigration Reform in the United States and Germany*

The Bush administration has noted “five key goals” that it hopes to accomplish through “comprehensive immigration reform.”<sup>113</sup> These goals include: (1) securing the border; (2) establishing a temporary worker program that will “meet the needs of our economy and take the pressure off our border”; (3) creating a “reliable system for verifying documents and work[er] eligibility”; (4) resolving the legal status of the many workers that have been in the country illegally; and (5) “uphold[ing] the great American tradition of the melting pot

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105. *Id.* at 281.

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.* SACIA would call for the expansion of K-1 Visitor’s Visas, which “currently allow[] an applicant to enter the United States to marry an American citizen.” *Id.*

112. *Id.*

113. President George W. Bush, Address at the National Restaurant Association Meeting (May 22, 2006).

so America can remain what it always has been: one nation under God.”<sup>114</sup>

When comparing the goals of immigration reform in the United States with those of the recent reform in Germany, a significant difference is immediately apparent. One of the most important goals of Germany’s new policy is integration.<sup>115</sup> With approximately half of foreign children unable to speak German and as many as 70% failing to graduate high school,<sup>116</sup> the new immigration policy has made language and “basic familiarity with [German] history, culture and the legal system” a priority.<sup>117</sup> Additionally, the Residence Act has made “attracting or retaining skilled labor” a significant goal.<sup>118</sup> Thus, those seeking to enter Germany or those who achieve high levels of training while living as foreigners in Germany will likely become citizens of Germany with greater ease than those with lower skill levels.<sup>119</sup>

Because there is currently no need for additional foreign workers in Germany, it is in a slightly different position than the United States. Nevertheless, its goals of integrating foreign workers and attracting and retaining skilled labor should not be ignored by the United States. Germany found itself in need of reform after years of hosting foreign workers through the *Gastarbeiter* Program. As the Bush Administration and many members of Congress seem eager to embark on an American-style *Gastarbeiter* Program, it may be wise to step back and consider the long run implications of such a program. If policy makers look to the experiences of Germany and incorporate the goals of its recent reforms, they may be able to bypass a step that has caused significant racial and economic harm in Germany.<sup>120</sup>

### B. *Strengths and Weaknesses of the Bush Administration’s Proposal*

While the Bush administration’s proposal undeniably offers some positive solutions to the current immigration crisis, there are certainly many aspects which could be improved upon. The administration’s proposal recognizes that there is a problem with respect to undocumented workers and realistically addresses that problem while attempting to protect American workers. However, by relying on a guest worker program rather than a plan that eventually results in permanent citizenship, Bush’s plan simply postpones the

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114. *Id.*

115. See Hartnell, *supra* note 35, at 390 (discussing Germany’s “get-tough” policy with regard to integration of immigrants).

116. Nickerson, *supra* note 52, at A1.

117. Hartnell, *supra* note 35, at 394.

118. *Id.* at 388.

119. *Id.*

120. See *infra* Part III.B.1 (discussing long-term impact of the *Gastarbeiter* Program in Germany).



need to address issues that will almost certainly arise as guest workers are “welcomed” into the country.

## 1. Problems with the Bush Administration’s Proposal

### a. Ignoring the Melting Pot

If a guest worker program is enacted, this generation and the future generations of guest workers will be permitted to enter the country for just a few short years before they are forced to return to their home country with no opportunity to gain citizenship.<sup>121</sup> Such treatment certainly raises the question of whether the notion of the melting pot will survive. While there are more problems with a guest worker program than the fact that it may jeopardize the United States’ status as a melting pot, that fact should not be ignored. When Emma Lazarus wrote, “Give me your tired, your poor, your huddled masses yearning to breathe free,”<sup>122</sup> it is unlikely that she meant, “but only for a few years and only if employers in the United States have a need, which cannot be fulfilled by domestic workers.” The United States has consistently presented itself as the land of opportunity for all those who seek a better life, and ultimately, has built its success on the hard work of all those who came to take advantage of that opportunity. As the world continues to change and industry in the United States continues to evolve and transform, it may be unwise to abandon completely the policy that has brought so much strength and success to the country throughout its history.

### b. Adopting *Bracero* Problems

As Representative Sheila Jackson-Lee points out, “[t]he administration’s proposal erroneously presumes that a ‘compassionate’ work environment for employees will naturally emerge as a result of offering illegal immigrants temporary guest worker status.”<sup>123</sup> That was not the case during the *Bracero* years and will unlikely be the case if a guest program is enacted. Post-World War II *braceros* were dependent upon their employer in order to remain employed and thus remain in the United States.<sup>124</sup> Those workers “who complained about working conditions were sent home, and employers threatened braceros with returning them to Mexico if

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121. Jackson-Lee, *supra* note 9, at 276.

122. EMMA LAZARUS, *THE NEW COLOSSUS* (1883), reprinted in EMMA LAZARUS: SELECTIONS FROM HER POETRY AND PROSE 48 (Morris U. Schappes ed., 1967).

123. Jackson-Lee, *supra* note 9, at 280.

124. Morgan, *supra* note 20, at 141.

they did not comply with their demands.”<sup>125</sup> As a result, American employers were able to exploit their foreign work supply.<sup>126</sup>

Like the post-World War II *Bracero* Program, the Bush proposal calls for matching workers with employers and making workers’ ability to remain in the country contingent upon having a job.<sup>127</sup> Therefore, guest workers may be similarly unwilling to risk their jobs and their ability to remain in the United States in order to report poor treatment by employers.<sup>128</sup> Reporting unfair treatment is further hindered because the proposal does not call for a means by which workers can improve their English language skills or obtain legal representation.<sup>129</sup> Without such language skills, workers may have a difficult time communicating abuses and poor treatment if they did choose to report their employer.<sup>130</sup> Finding the proper outlet through which to obtain legal representation would also be a hurdle for those seeking to enforce the rights that the proposal guarantees to them.<sup>131</sup> The unlikelihood of workers reporting abuses coupled with the difficulty in reporting such abuses could in effect take away any rights that have been “guaranteed” by the proposal.

Domestic workers also face threats if the Bush administration’s proposal is enacted. Similar to the Bush administration’s proposal, employers during the *Bracero* years were able to determine when labor shortages existed and thus when *braceros* were necessary.<sup>132</sup> During those years, “wages tended to stagnate or fall in areas where *braceros* worked.”<sup>133</sup> This was largely because employers offered extremely low-wage jobs to domestic workers; when domestic workers found these wages unacceptable, employers would declare a labor shortage and call upon *braceros* to fill low-wage positions.<sup>134</sup> Ultimately, however, domestic workers found the need for employment greater than the need for adequate wages, and therefore accepted the artificially low wages.

The administration’s guest worker proposal requires employers first to attempt to fill labor positions with domestic workers before they fill such positions with guest workers.<sup>135</sup> However, again, employers could offer unacceptably low wages in order to create an artificial labor shortage, and therefore request guest workers.<sup>136</sup>

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125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.* at 142.

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.* at 137.

133. *Id.*

134. *Id.*

135. Jackson-Lee, *supra* note 9, at 276.

136. Morgan, *supra* note 20, at 137.

“[B]y artificially increasing the labor supply of low-skilled workers, it would short-circuit any market incentives for employers to increase the wages and benefits, or improve working conditions, for entry-level blue-collar workers.”<sup>137</sup> Consequently, domestic workers would face stagnant or lower wages and fewer opportunities.<sup>138</sup> Thus, while attempting to protect domestic workers by requiring that they are considered first when filling employment opportunities, the administration’s proposal actually exposes domestic workers to potential exploitation by placing power in the hands of employers.

c. Recreating the *Gastarbeiter* Dilemma

The Bush administration’s proposal calls for workers to remain in the country only for a short period of time and with only one opportunity to renew their temporary worker status.<sup>139</sup> However, “[h]istorically, guest workers do not want to leave and generally ‘stay long after the party is over—precisely because people are not things, and have their own plans and purposes.’”<sup>140</sup> This was certainly the experience of Germany. Comparing German policy and the resulting situation with the Bush administration’s proposal reveals many similarities that should be cause for concern.

In 1961, Germany began to accept Turkish guest workers to fill “the dirty jobs that Germans didn’t want.”<sup>141</sup> Like the Bush proposal, the *Gastarbeiter* Program was premised on the idea that workers would come for short periods of time when Germany was in need of workers and would return to their home country when the need ended.<sup>142</sup> However, the exact terms of the guest workers stay were “intentionally left vague.”<sup>143</sup> Initially, guest workers were able to remain if their “personality and purposes” made them “worthy of hospitality,”<sup>144</sup> but they were not allowed to bring their families so as to discourage them from creating roots in the country.<sup>145</sup> Eventually, though, workers did bring their families and were entitled to residency if it did “not harm the interests of the German Federal Republic.”<sup>146</sup> Rather than integrate with the native population, “parallel societies” arose in Germany, “in which native and immigrant

137. *Id.* at 137–38 (quoting Mark Krikorian, *Flawed Assumptions Underlying Guestworker Programs*, BACKGROUNDER, Feb. 2004, at 2).

138. *Id.* at 138.

139. Jackson-Lee, *supra* note 9, at 276.

140. Morgan, *supra* note 20, at 138 (quoting Krikorian, *supra* note 137, at 5).

141. Nickerson, *supra* note 52, at A1.

142. Hartnell, *supra* note 35, at 384.

143. Gabor & Rosenquest, *supra* note 2, at 290.

144. *Id.*

145. Nickerson, *supra* note 55, at A1.

146. Gabor & Rosenquest, *supra* note 2, at 290.

populations occupied the same countr[y] but shared little common ground.”<sup>147</sup>

As a result of these “parallel societies,” significant political turmoil was created in Germany.<sup>148</sup> Because workers stayed beyond Germany’s need, some argued that the high unemployment rates among the guest workers increased burdens on Germany’s social system and strained its national resources.<sup>149</sup> Unemployed domestic workers placed additional blame on these workers and eventually “[d]iscrimination and xenophobia became controversial political issues; many German politicians began to publicly blame economic and social problems on immigrant groups.”<sup>150</sup> As a result of guest workers staying beyond their welcome, two problems were undeniable—discrimination and an increased burden on the social system.

Like the *Gastarbeiter* Program, the Bush administration’s proposal is vague. The proposal grants guest workers temporary work status for three years, but with an option to renew.<sup>151</sup> While it appears that workers would only be able to renew their status one time, this is not entirely clear.<sup>152</sup> Furthermore, if workers are unable to renew their temporary status, there is no clear method for monitoring and ensuring their return home. While deportation is always available, it requires the expense of locating and removing the illegal worker, and, as the current situation clearly illustrates, the United States has had great difficulty in finding illegal workers and forcing them to return to their home countries.<sup>153</sup>

Because the Bush administration’s guest worker program essentially recreates the German *Gastarbeiter* Program, the Bush proposal will likely have similar results. The administration should assume that guest workers will remain in the United States indefinitely without fully integrating.<sup>154</sup> Under such circumstances, discrimination may be inevitable. If the administration truly wishes to have a guest worker program, it must include a method for ensuring that workers will only be guests or accept that guest workers will likely remain in the country, and therefore provide methods of integration to ensure that discrimination and social burdens do not increase in the country.

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147. Nickerson, *supra* note 55, at A1.

148. Gabor & Rosenquest, *supra* note 2, at 290–91.

149. *Id.* at 291.

150. *Id.*

151. Morgan, *supra* note 20, at 136.

152. *Id.*

153. The number of undocumented workers in the United States is currently estimated to be between 11 to 12 million people. Peter D. Salins, *Assimilation Nation*, N.Y. TIMES, May 11, 2006, at A2.

154. Gabor & Rosenquest, *supra* note 2, at 291.

## 2. Benefits of the Bush Administration's Guest Worker Program

### a. A Solution for Undocumented Workers

Under the Bush administration's guest worker proposal, undocumented workers already in the United States could "remain in this country legally for a limited period of time provided that they paid a registration fee and worked for a willing U.S. employer."<sup>155</sup> Thus, undocumented workers would be able to change their status from illegal to legal with little effort, assuming that the fee is not prohibitive and employment is not problematic. Because the Bush proposal does not punish current illegal immigrants by forcing them to return to their home country, the proposal changes the incentives for undocumented workers. If such a punishment existed, it would be far less likely that these workers would come forward and identify themselves. Therefore, the undocumented worker problem in the United States would remain despite immigration reform.

In addition, because undocumented workers would be more likely to come forward and gain legal status under the Bush administration proposal, working conditions and wages would likely improve for this group. Some suggest that undocumented workers are particularly exploited by "unscrupulous employers" who depress wages and offer extremely poor working conditions.<sup>156</sup> Although a noted disadvantage of the Bush proposal is the fact that employers retain the power to set artificially low wages and maintain unsafe conditions, the Bush proposal could nevertheless provide a partial check. At the very least, workers would have an option to report their employer's conduct, which would increase the bargaining power of those who were previously illegal. Therefore, while wages and working conditions may remain less than ideal, for undocumented workers, the situation would likely improve.

### b. A Ready Source of Cheap Labor for Employers

The Bush administration's proposal allows domestic employers to have access to a steady source of inexpensive foreign labor.<sup>157</sup> Such labor would be inexpensive because (1) there will be few costs associated with locating willing workers and (2) employers will control a market where supply will likely exceed demand. A fundamental aspect of the administration's proposal is the matching of guest workers with domestic employers.<sup>158</sup> Thus, a majority of the

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155. Jackson-Lee, *supra* note 9, at 275.

156. Cronin, *supra* note 33, at 199.

157. Morgan, *supra* note 20, at 134.

158. *Id.*

costs associated with searching for labor will be provided for employers simply by participating in the program. Consequently, “workers will be matched more quickly, cheaply and easily,”<sup>159</sup> ultimately cutting costs for employers.

Additionally, as the current situation already suggests, the number of those seeking to enter the United States greatly exceeds the number who can legally enter.<sup>160</sup> This excess in supply is unlikely to change with the implementation of the Bush administration’s guest worker proposal. Because the proposal allows employers to set prices and determine when a labor shortage exists,<sup>161</sup> employers will likely take advantage of the excess supply. Basic economics suggests that when the supply of workers exceeds demand by employers, wages fall. Thus, employers will discover that they can reduce wages below those required by the domestic market, and continue to find employees. This cheap source of labor will allow employers to reduce costs and consequently realize greater profits.

### C. *The Strengths and Weaknesses of the “Save America Comprehensive Immigration Act”*

Like the Bush administration’s proposal, Representative Sheila Jackson-Lee’s SACIA proposal has both advantages and disadvantages. However, because Representative Jackson-Lee’s proposal offers permanent legal status in the United States rather than just temporary access, these advantages and disadvantages are far different than those of the administration’s guest worker proposal. In fact, in many instances the strengths of Bush’s proposal are the very weaknesses of Jackson-Lee’s proposal, and the strengths of Jackson-Lee’s proposal are the very weaknesses of Bush’s proposal.

#### 1. Flaws of SACIA

##### a. Challenging “Earned Access to Legalization”

A fundamental component of Jackson-Lee’s proposal rests on the idea that only those undocumented immigrants who have “earned access to legalization” may remain in the United States.<sup>162</sup> To “earn” that right, undocumented workers must have been in the country for a period of five years or more.<sup>163</sup> While this policy is grounded in the idea that undocumented workers will have deep roots in the country

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159. Jackson-Lee, *supra* note 9, at 138.

160. See Salins, *supra* note 153, at A2.

161. Morgan, *supra* note 20 at 137.

162. Jackson-Lee, *supra* note 9, at 279.

163. *Id.*

if they have been here for more than five years,<sup>164</sup> it seems troubling for two reasons. First, the policy is in effect rewarding those who have been able to evade immigration authorities for the longest. Thus, in effect, the policy rewards those who have violated current immigration laws for the longest period of time.

The second problem created by allowing only those who have been in the country five years or longer to remain is the incentives that such a policy creates. For undocumented workers who have been in the country less than five years, there is little incentive to identify themselves and seek legal status. Consequently, unless the government discovers better methods for locating undocumented immigrants, a large number of illegal immigrants will likely remain in the United States despite immigration reform. In addition, the problems typically associated with undocumented workers such as low wages, poor working conditions, and employer exploitation will remain unaddressed. Therefore, SACIA fails to adequately recognize and cope with the current undocumented worker situation.

#### b. Failing on Integration

SACIA calls for permanent legal status in the United States.<sup>165</sup> Therefore, unlike the Bush administration's proposal, which arguably fails to provide for a strategy to ensure that guest workers will exit the country upon expiration of their legal status, the very foundation of SACIA permits immigrants to remain indefinitely. In addition, SACIA calls for family reunification.<sup>166</sup> The purpose behind this aspect of the proposal is to help ensure that "lawful permanent residents [do not] endure family separation."<sup>167</sup> While this is a valid purpose, the proposal fails to provide any methods by which these families can integrate into the United States. The family reunification aspect of the proposal makes integration even more important because families who settle together may be more likely to isolate themselves rather than integrate.

While it may be argued that immigrants should not be required to give up their culture and "integrate" upon arrival, the "parallel societies"<sup>168</sup> that exist in Germany illustrate that some types of integration are not just helpful, but likely essential. In fact, the discrimination and xenophobia that has been experienced in Germany arguably already exists today in the United States. For example, a pizza chain in Texas recently offered to accept pesos from

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164. *Id.*

165. *Id.*

166. *Id.* at 281.

167. *Id.*

168. Nickerson, *supra* note 52, at A1.

customers, and was met with death threats and hate mail as a result of its decision.<sup>169</sup> One e-mail stated, "Quit catering to the damn illegal Mexicans."<sup>170</sup> Thus, it is almost undeniable that discrimination towards Mexicans, who may or may not be illegal, already exists today. Future immigration reform, especially that which calls for permanent legal status, must provide some means for coping with this problem.

## 2. Strengths of SACIA

### a. Maintaining the Melting Pot

While President Bush's goals include preserving the country's history as a melting pot,<sup>171</sup> Representative Jackson-Lee's proposal actually accomplishes this goal. By calling for permanent legal status, SACIA provides immigrants with access similar to that which existed for the first one hundred and fifty years of this country's existence.<sup>172</sup> Despite the fact that SACIA does not let undocumented workers remain in the United States, it does provide foreign workers with the opportunity to come to the United States not as guests, but as permanent residents.<sup>173</sup> Thus, these immigrants would be given the opportunity to truly melt into the country, and not just the opportunity to enter and then be plucked out of the melting pot after just a few short years.

### b. Hope for Foreign and Domestic Workers

Jackson-Lee's proposal provides hope for domestic workers currently competing with foreign workers in two ways. First, because Jackson-Lee's proposal calls for permanent legal status, the ability of workers to remain in the country would not depend upon the will of their employers.<sup>174</sup> Consequently, foreign workers would have the opportunity to work with domestic workers when requesting higher wages or better benefits without the fear of deportation.<sup>175</sup> Thus, not only would foreign workers have the ability to protest wages and working conditions, but they might also be able to organize as workers without regard to whether they are domestic or foreign, and

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169. *Pizza Chain Under Fire for Accepting Pesos*, CHI. SUN TIMES, Jan. 12, 2007, at 21.

170. *Id.*

171. President George W. Bush, Address at the National Restaurant Association Meeting (May 22, 2006).

172. See *supra* Part II.A.1.i (discussing the history of immigration policy in the United States).

173. Jackson-Lee, *supra* note 9, at 279.

174. *Id.* at 280-81.

175. *Id.* at 280.



collectively bargain with employers for better wages and working conditions.<sup>176</sup> This would help to ensure that wages were not artificially low and as a result benefit domestic workers.

Secondly, SACIA calls for a surcharge on fees related to permanent-resident status petitions. These fees would be used to provide employment-training programs for domestic workers that would be targeted at "Americans in lines of work especially affected by undocumented worker growth."<sup>177</sup> Therefore, even if foreign workers replaced domestic workers in certain industries, the plan would provide domestic workers with training programs that could give them the necessary skills to work in other industries.

## V. TRANSFORMING GUEST WORKERS INTO FULL CITIZENS: A PROPOSAL OF COMPROMISE

### A. *The Basic Structure*

The Bush Administration's proposal and that of Representative Jackson-Lee provide very different solutions to the same problem. With each solution is a unique set of strengths and weakness. A solution that is able to combine the two proposals can likely capture many of the strengths while avoiding a large number of the weaknesses. One such solution would be to create a guest worker program that permits guests to work towards permanent legal status while they are in the country.

The basis of the solution rests not on matching guest workers with employers, but with providing a set number of guest-worker and guest-family visas per month to be awarded to foreign workers and families based on a waiting list. The specific number of visas available per month would vary depending on factors such as unemployment statistics and claimed employer need. However, this number would be determined objectively by the government rather than by self-interested employers claiming artificial needs. Guest workers and guest families would be eligible for the program upon a demonstration of good character. This requirement would not be particularly stringent; however, it would require a showing that all individuals seeking to enter the country do not have criminal records, outstanding warrants, or substantial financial obligations or judgments in their home country that they may be seeking to avoid. Once registered on the waiting list, visas would be offered from the top of the list down.

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176. *Id.*

177. *Id.* at 281.

Once a guest worker or family was awarded guest status, they would be issued a three year visa with only one opportunity for renewal. However, during their time in the United States as guests, these individuals would have the opportunity to earn points towards permanent legal status, and if the worker or family achieved the required number of points within the six year period, their guest worker status would change to permanent legal status. Points would be awarded based on factors such as employment, education, English language skills, knowledge of American history and law, etc. The initial opportunity to gain points would come at the time of entry. Individuals entering with high education levels and some knowledge of English would be awarded points instantly upon arrival. However, after arrival, there would be continuous opportunities to earn points.

Points earned after arrival would be awarded based on achievement and consistency. An increasing number of points would be awarded for every six months of steady employment. For example, six months of continuous employment may be worth five points, twelve months worth ten points, eighteen months worth fifteen points, etc. Thus, in eighteen months there would be an opportunity to earn thirty points for employment. Points for education would be awarded based on nearly any level of achievement, with increased achievement being worth more points. Thus, whether an individual—or child in the case of a guest family—graduated high school, received a GED, participated in vocational training, earned a two- or four-year degree, or participated in a graduate program, the individual or family would be awarded points. Points for learning English, history, policy, or law would also be awarded based on the level of achievement.

While tracking the points earned by foreign individuals or families may initially seem daunting, it would largely be the responsibility of the individual or family. Upon entry, individuals would receive a packet in their native language explaining the program and how points could be earned and tracked. This packet would also include forms for submitting points, which would be in both English and the individual's native language. These forms would require a signature by either an employer or a certified teacher/instructor who could attest to the individual's level of achievement. It would then be the responsibility of the individual to submit these forms to the government. Falsification of these forms by the submitting individual would have consequences. The first offense would result in a subtraction of points from that individual's total and the second offense would result in the individual being deported and unable to participate in the program for a set number of years. In addition, if the employer or instructor knowingly signed a false form, he or she would face repercussions for aiding in the submission of a false statement to a government agency.

A summary of points could be sent to the individual on an annual or semi-annual basis to ensure that the points earned during that period were correctly documented. If the summary showed a mistake, it would be the responsibility of the individual to notify the government within a set period of time. To renew guest worker status or gain permanent legal status, a set number of points would be required for all those who enter individually, while the number of points required of a family would be determined based on the number and ages of family members.

Like the Bush administration's proposal, this program would allow undocumented workers to remain in the country as guest workers. However, undocumented workers would not receive any points for employment in the country prior to guest worker status, nor would they be eligible for the initial awarding of points based on existing language skills and educational achievement. Thus, guest workers would have an incentive to begin participation immediately in order to begin accruing points; however, there would be some consequences for their previous illegal status. For individuals who have been illegal for numerous years, this punishment may seem slight; however, these individuals are the most likely to have some working knowledge of English and American history and policy. Thus, the severity of the consequences would likely increase with the number of years the individual has been in the country illegally. Those workers who have been in the country legally would immediately be eligible for the program, and would be given credit for previous work as well as education and knowledge of English.

### B. *Compliance Incentives*

It is not just undocumented workers that would have an incentive to comply; all individuals participating in the program would have such an incentive. Both renewal and permanent legal status would be based upon the number of points an individual or family earned. The point requirement for renewal after the first three years of guest worker status would be minimal—possibly just enough to ensure that the individual had been employed for at least twenty-four (or thirty) months of the thirty-six month visa, regardless of whether employment was continuous. However, the point requirement for permanent legal status would be far more substantial. Because proof of points would be the sole means of establishing eligibility for renewal or permanent legal status, participation in and compliance with the program would be the sole means of remaining in the country.

In addition, the penalty for non-compliance would further incentivize compliance. In the case of undocumented workers who have never participated in the program, discovery of illegal status

would make that individual ineligible to participate in the guest worker program for a specified number of years. Those who participate in the program but failed to return to their home countries after either failing to meet the point requirement for renewal after three years or the point requirement for permanent legal status after six years would lose all points accrued while enrolled in the program. Those who participated in the program and failed to meet the point requirements would otherwise be able to save points previously earned and be on an "accelerated list" for eligibility to reenter the country for a second time as a guest worker. Thus, such workers would reenter with a significant increase in the likelihood of obtaining permanent legal status.

The key to an effective immigration reform will likely be its enforceability. With eleven to twelve million undocumented workers currently in the country,<sup>178</sup> it is clear that enforcement is a very real problem. Therefore, a policy that can enforce and regulate itself is likely the most effective way of ensuring compliance and a resolution to the undocumented worker problem. By allowing guest workers to enter this country and essentially control their fate, in terms of their ability to remain in this country, guest workers would have huge rewards (permanent legal status) for compliance and significant consequences (loss of points and ability to participate in the program) for non-compliance.

### C. *Incorporating the Strengths of both Bush's and Jackson-Lee's Proposals*

#### 1. The Melting Pot

While compliance with a guest worker program as a means of earning permanent legal status is not the traditional method of achieving such status, at least the possibility is not foreclosed. As has been the tradition of this country since its formation, those entering the country as foreign citizens are eligible to remain in the country. Although the ability to remain in the country would involve far more steps than traditionally required, this is because the United States is in a different position than it was at its formation. The need for workers was far greater when the United States was a young country.<sup>179</sup> With the move from a manufacturing to a service-based economy, the needs of the country are changing, justifying a slightly different approach.

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178. Salins, *supra* note 153, at A2.

179. See *supra* Part II.A.1.i (discussing how early in America's history, foreign settlers were offered almost unrestricted access into the country).

Recognizing the current needs of the country ensures not only that those needs are met, but also that the United States does not place itself in a position where unemployment is high and social services are strained. While the Bush administration's proposal threatens that notion of the melting pot, Representative Jackson-Lee's proposal recognizes the notion but fails to meet the needs of the United States. Therefore, by incorporating both plans, the melting pot may be saved with less probability that the economic resources of the country will be strained.

## 2. The Effect on Foreign and Domestic Workers

This solution recognizes the needs of foreign workers and, by doing so, positively affects not just foreign workers but domestic workers as well. Under the proposal, guest workers are allowed to enter the country without being matched with an employer who essentially controls their fate. Guest workers would enter the country and be given information about where and how to find employment and actually finding an employer would be solely their responsibility. However, workers would not be tied into working for only one employer. If the employer offered poor working conditions, low wages, or simply exploited his employees, guest workers would be able to quit without the fear of deportation. Therefore, while the program would reward long term employment with a single employer, it certainly would not mandate it.

Domestic workers would also benefit from the proposal in one of the same ways that they benefit under Jackson-Lee's SACIA proposal. Under this proposal, domestic workers would no longer be required to compete with their foreign counterparts. Instead, domestic and foreign workers would be able to work together and possibly demand better wages and working conditions. Like Jackson-Lee's, this proposal would help to end the race to the bottom that has resulted with respect to wages and working conditions because of the current immigration and undocumented worker situation.

## 3. Prioritizing Integration

Finally, this proposal does something that current immigration reform proposals fail to do. It provides a method for integration. The growing animosity towards foreign workers in the United States, as well as the existing xenophobia in Germany, indicate that integration must be a component of any immigration reform in the United States. By creating a system that awards points based on factors that promote integration—such as knowledge of the language, legal system, and culture, as well as education—integration will inevitably occur with respect to those individuals who earn permanent resident

status. Ultimately, under this plan, such status depends on integration; therefore, there is not just an incentive to integrate, but also a requirement.

The extreme situation in Germany resulted in the Residence Act, which makes integration one of its main goals.<sup>180</sup> However, it provides for such integration by offering courses, which are only mandatory for a select group of foreigners.<sup>181</sup> By not making such courses required for all, it is likely that many groups will have no incentive to participate.<sup>182</sup> Thus, the “Little Turkey” of Berlin will likely remain as a “parallel society.” However, this proposal ensures that all immigrants to the U.S., with the possible exception of highly skilled, fluent immigrants, would participate. While such participation may seem controversial, the struggle in Germany and the current situation in the United States highlight the need for integration to prevent the country from taking a step back in its quest to conquer discrimination.

## VI. CONCLUSIONS

Unlike Germany, the United States is a country of immigration. With immigration reform almost inevitable, the U.S. must decide whether it wishes to remain such a country. The notion is already in jeopardy because of the discrimination faced by many immigrants today. Therefore, lawmakers must act fast if they hope to preserve one of the most fundamental principles of the country, and prevent further distinctions between U.S. citizens and immigrants. Many reform plans are calling for guest worker programs, which will only highlight differences between American citizens and immigrants. Essentially, with only a temporary right to be in the country, there will never be the opportunity to immigrate and integrate, and consequently, the melting pot will be lost.

Both the *Bracero* Program and the *Gastarbeiter* Program highlight the fact that guest worker programs divide rather than unite. In addition, such programs hurt both foreign and domestic workers. However, a return to unrestricted access to permanent legal status is also an unwise solution. The United States is not in the position that it was in the early years of nationhood, and therefore, it

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180. See Aufenthaltsgesetz [Residence Act], June 30, 2004, BGBl. I at 721, § 43 (F.R.G.), available at <http://www.zuwanderung.de/english/downloads/aufenthgengl.pdf> (emphasizing the promotion of integration of legal immigrants into the economic, cultural, and social life of Germany).

181. *Id.* §§ 44, 44a.

182. See, e.g., EUROPEAN FORUM FOR MIGRATION STUDIES, MIGRATION REPORT, Jan. 2007, available at [http://web.uni-bamberg.de/~ba6ef3/dokz07\\_e.htm](http://web.uni-bamberg.de/~ba6ef3/dokz07_e.htm) (stating that although “integration courses have been received well among the migrants in Germany . . . [a] considerable deficiency is the low participation in the final exams”).

no longer has the same need for foreign workers. Furthermore, such access simply cannot be permitted without some plan for integration, which requires some control over access to the country. Thus, immigration reform requires a balance between the traditional notion of the melting pot and the needs of the country as they exist today.

Ultimately, immigration reform requires an original solution. Policies of the past simply cannot provide the solutions for the country's current problems. First, because of the large number of undocumented workers who are currently in the country, immigration reform must include a method for incentivizing such individuals to identify themselves and enter the work force legally. Second, reform must provide for a method of integration. Such integration does not require that immigrants abandon their culture, but rather that they be given an opportunity to gain skills and knowledge that will allow them to advance in both economic and educational realms. Finally, reform must recognize that the U.S. is a country of immigration by self-definition. Therefore, any plan should call for some form of permanent legal status in order to preserve the identity of the country.

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