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Employers are not immigration officers

By: Jeff Jacoby- June 16, 2013

Immigration reform is notoriously contentious. Yet it's hard to find anyone who doesn't think employers should be barred from hiring illegal immigrants — and sharply penalized if they do so.

When President Obama last week endorsed what he called the “common-sense, bipartisan” immigration package now before the Senate, he praised it for getting tough on “shady employers” who “knowingly hire undocumented workers.” The White House website devotes an entire page to workplace enforcement of immigration restrictions. It leads off with the president's call for “cracking down more forcefully” on companies that employ undocumented aliens, and boasts that his administration has imposed more than \$100 million in employer sanctions since January 2009.

Whatever else may polarize Republicans and Democrats, on this issue they march in lockstep.

During the 2012 presidential campaign, Mitt Romney and Newt Gingrich favored intensifying the penalties on employers who hire illegal immigrants. Romney drew flak for praising “self-deportation” — inducing undocumented workers to leave by making it impossible for them to find employment. On the Senate floor last Tuesday, Democrat Charles Schumer said essentially the same thing: “Even if someone is able to get here illegally or overstays their visa, their main goal for being here — working — will be impossible after the bill is passed . . . If we eliminate the jobs magnet, we eliminate illegal immigration.”

Even leading pro-immigration advocacy groups, such as ImmigrationWorks USA and America's Voice, trumpet their support for “crack[ing] down hard” on “bad employers” who hire immigrants without legal work papers. They may have concerns about the details of workplace enforcement — especially the expanded use of E-Verify, the federal government's electronic database for vetting job applicants. But like most Americans — 85 percent, according to a recent Gallup Poll — they seem to regard it as in the natural order of things that the government should forbid the hiring of the illegal migrants, and that employers should have to check the residency status of anyone who applies for a job.

I cannot fathom why.

I don't dispute that Washington has the authority to establish rules for immigrating to the United States, and to proceed against anyone caught violating those rules. But by what logic does that entitle Congress to turn employers into involuntary immigration agents, and to compel them to enforce a federal policy that the government couldn't enforce? It would be one thing to call for “cracking down hard” on an employer who hires someone to do work that is in itself illegal, fraudulent, or a threat to public safety. But why should a job applicant's green-card or visa status — which is a matter between him and US immigration officials — impose obligations on an employer willing to pay him honest wages for honest labor?

If the law can ban a company from hiring a competent and peaceable worker who happens to be in the country without appropriate documents, can it also ban a company from hiring a worker who happens to be bankrupt? Or who has unpaid speeding tickets? Or who was once arrested for smoking marijuana?

The government can levy penalties on Americans who cheat on their tax returns; it can discipline airline passengers who refuse to undergo a security screening at the airport. Does it follow that every employer, as part of its hiring process, can be required to check with the Internal Revenue Service or the Transportation Security Administration to make sure it doesn't hire someone with a tax-code infraction or an airport security breach in his past? Can any legal skeleton in your closet be used by Congress not just to strip you of the right to work, but to punish any employer who hires you?

There is nothing self-evident about a federal prohibition on hiring illegal immigrants. It is an innovation that dates back only to 1986 and the passage of the Immigration Reform and Control Act. Before then, as the Cato Institute's Jim Harper notes, "employers were free to hire workers based on the skills and willingness they presented, and not their documents." Indeed, while federal law before then made "harboring" illegal immigrants unlawful, it explicitly exempted employment from the definition of harboring.

That was as it should be. Immigration enforcement is the government's job, not the private sector's. No employer should be punished because of an employee's immigration problems. "Workplace enforcement" wasn't an effective answer to illegal immigration in 1986; even harsher sanctions aren't likely to be any more effective now. But whether or not such severity would be effective, a free society should find it offensive. Even if it's the one piece of immigration "reform" that everyone agrees on.