

Immigration Reform and the Current Debate



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by Judith Golub

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Immigrant Legal Resource Center (ILRC)

As Congress and the Bush Administration focus on changing our immigration laws, it is vitally important to remember the goals of reform: solving the problems in our current system so that it makes sense, and is just and effective. Given the importance of the issue, Congress and the Administration need to get reform right. Such reform should include the following components:

1. Legalization: Successful reform mandates the most expansive earned legalization provisions that would make eligible the largest number of undocumented persons. Successful reform also would include the DREAM Act and AgJobs. The DREAM Act would allow eligible students to adjust their status to legal permanent residents (LPRs) and return to states the discretion to charge these students in-state tuition rates. AgJobs would legalize agricultural workers and offer needed reforms to the H-2A program.
2. Family backlog reduction: In this pro-family nation, we must eliminate the family backlog and increase the number of visas available to reunite families. Some U.S. citizens currently wait up to twenty years to reunite with family members.
3. Due Process Protections: We must uphold the American system of justice and ensure due process protections for all, both U.S. citizens and noncitizens, regardless of their immigration status. We especially need to address the erosion of due process protections for legal permanent residents (LPRs) and refugees that has been the consequence of past laws, policies, and practices including: mandatory detention, the expansion of the “aggravated felony” definition to include violations that are neither aggravated nor felonies, and taking away the ability of judges to weigh individual circumstances and allow someone a second chance.
4. New Worker Program: A new worker program is essential to legalize the flow of future migration and meet our labor market needs. There is a need for workers in our economy, especially in the service and high-tech sectors: The U.S. needs workers in a wide range of areas including health care, construction, and the hospitality industry as well as in the more skilled occupations. New worker programs reflect the fact that some workers do not seek to reside permanently in the U.S., while others do. Any new worker program must contain protections including: portability of visas so that workers can change jobs; the right to join unions and have full labor rights; the right to bring their families with them; and the ability to self-petition for permanent residency and citizenship.
5. Worker Conditions, Rights, and Workplace Enforcement: We support the vigorous enforcement of labor and civil rights laws. All workers must be protected by local, state and federal labor and civil rights laws, regardless of immigration status. Immigration enforcement also must complement rather than undermine the enforcement of labor and employment laws.
6. Enforcement: The most effective way to ensure that U.S. laws are enforced is to have laws that are workable and reflect the needs of American families, the economy and our international obligations. These laws also must be humanly enforced and reflect a commitment to the American system of justice with regard to due process and civil liberty protections. Continued enforcement of dysfunctional laws will lead to more dysfunction, not more enforcement. Such dysfunction is especially apparent at our nation’s borders. Decades of increased border enforcement policies have not stopped the flow of undocumented immigration while benefiting smugglers, offering a competitive advantage to unscrupulous employers, and wrecking havoc in border communities.

What is needed is reforming immigration laws so that there are legal avenues for people to enter and exit the U.S.; human rights training for Border Patrol agents; improving infrastructure at ports-of-entry; ending the use of military personnel to carry out border enforcement operations; strictly prohibiting local law enforcement from enforcing immigration law; forming citizen oversight committees to ensure community input at all levels of border enforcement practice and policy; and developing clear complaint response procedures within the Border Patrol.

One of the possible consequences of a failure to reform our immigration laws so as to create an effective, just and humane system could be intensifying enforcement policies and actions. That would be a grave mistake: It would make the current system even more dysfunctional than it is today, separate families, terrify communities, violate the Constitution, waste resources and weaken our economy.

7. Working with Immigrant Sending Countries: Martin Luther King Jr. wrote that nation states are like neighborhoods: what happens in one effect what happens in the other. Migration, trade, social and economic policies, issues of human justice and globalization all impact the U.S. and our neighbors in this hemisphere and across the globe. Successful immigration policy should neither begin nor end at our borders and instead should address the realities of global policies as well as domestic considerations. The U.S. government needs to work closely with other countries and consider the impact of U.S. foreign, economic, trade, civil and human rights and other policies on the migration of people.

THE CURRENT DEBATE: Democratic and Republican Senate leaders, along with the Bush Administration, have been negotiating to try to agree on a compromise. The Senate Republican negotiators include Senators Jon Kyl (R-AZ) and John Cornyn (D-TX) and the Democratic negotiators are Senators Edward Kennedy (D-MA), Ken Salazar (D-CO), and Robert Menendez (D-NJ). Commerce Secretary Gutierrez and Homeland Security Secretary Chertoff also have participated in the negotiations. Both Democrats and Republicans understand that because neither has enough votes to pass what they want, any bill that passes must be bi-partisan. During the negotiations, the Bush Administration and Republican leaders reportedly have proposed restricting family-based immigration, fundamentally changing our immigration system so that it is based on a point system, and opposing workers' ability to adjust their status. Republican negotiators also appear to be using the Democrats' strong support for legalization as leverage to try to extract concessions in the areas noted above, most especially family-based immigration. Democratic leaders are in the position of trying to produce a bill with enough compromises that would bring along enough Republicans without alienating their base. Both Democrats and Republicans probably will seek to blame the other if no consensus is achieved and a bill is not passed.

The bottom line for the ILRC is that for immigration reform to be effective, just and workable, it needs to reflect the principles noted earlier. Whether or not the negotiations achieve agreement, the tone and tenor of the debate thus far is indicative of the major issues in reform and the broader struggle we face. Several ill-conceived proposals, some noted above, have been raised that would: severely restrict family-based immigration; create a point system to determine future migration; prohibit workers who participate in the new worker program to adjust their status; dilute due process protections; and mandate that current dysfunctional laws be enforced before proceeding to reform these laws. Such proposals should be defeated.

Family-based Immigration: Family-based immigration is one of the cornerstones of U.S. immigration policy. Not only does it reflect the U.S.'s pro-family traditions, family-based immigration also has served the country well socially and culturally. Studies also have established that family immigration provides important economic benefits in terms of encouraging entrepreneurship, innovation, and new business formation and directions in existing businesses, and meets labor market needs in an ongoing flexible fashion that contributes to a vibrant economy.

There is no legitimate reason behind current proposals from the White House and Senate Republican leaders to eliminate certain family immigration categories or cut-off petitions filed after the arbitrary cut-off date of May 2005. Those who seek to dramatically reduce family-based immigration allege that it leads to “chain migration” that will flood the U.S. With no data to support their claim, opponents try to raise fears by alleging that one immigrant can “yield” up to 273 immigrants in 15 years. Yet, the “chain” between the first immigrant and the third immigrant would be between 29 years and 47 years, depending on the country of origin. It also is important to remember that more than half of family immigration is the spouses and minor children of U.S. citizens, a category no one has proposed to eliminate. Finally, the fact that three in four immigrants currently are Latino or Asian is a largely unspoken factor in the debate that many believe has fueled opposition to family-based immigration.

Ill-conceived proposals that would trade-off family-based immigration for employment-based immigration should be rejected. Family-based immigration has served this nation well and complements the employment-based system. Furthermore, Senate Republican leaders’ proposal to hold legalization hostage to a reduction in family-based immigration also should be rejected.

Point System: The Bush Administration and Senate Republican leaders have proposed basing future migration flows on some sort of merit point system that would select people based on high skill and education levels. Proponents of the point system cite as their models the systems in Canada and other countries, without revealing that the system in Canada, for example, does not even work as intended to bring in needed workers. Besides the fact that the point system proposal proposed by the Bush Administration and Republican leaders appears to stray from these models, as proposed it would dramatically reduce family-based immigration and limit legalization. Furthermore, such a system with its emphasis on high skill levels would not reflect the needs of the future labor market according to the Bureau of Labor Statistics: 50% of workers with less than BAs and 50% with BAs or more. Business leaders also have expressed concern that a point system would cede too much power to bureaucrats to determine who would gain entry to the U.S.

Notwithstanding substantive concerns about the point system, any change of the magnitude proposed must be fully explored and tested through a pilot program to determine its workability and evaluate its impact. Furthermore, a point system cannot take the place of immigration reform that reduces the backlog in family-based immigration, facilitates the migration of future family members, allows new workers to sponsor their family members, and facilitates the process to legalize people who are here.

Prohibiting Workers in the Worker Program from Adjusting their Status: The Bush Administration and Republican leaders support a program that would allow workers to enter and work in the U.S. for two or three years at a time, and then mandate their return to their countries of origin, but would include no meaningful path to adjust status. A new worker program must include the option for these workers to self-petition for legal permanent residency and citizenship, change jobs, have full labor rights, bring their families to the U.S. with them, and self-petition for permanent residency and citizenship

Due Process Protections: Much of the reform debate to date has mischaracterized provisions that would eviscerate due process protections by labeling them as interior enforcement measures. In reality, these provisions would distort the American system of justice by dramatically and negatively impacting on the rights of legal permanent residents, as well as make ineligible for legalization a significant number of otherwise eligible people. In addition to mislabeling these measures, Congress has not even adequately focused on them during hearings and mark-up or on the floor. Given the fact that many would deeply impact legal permanent residents, the “other 12 million,” it is important for these provisions to get the attention they deserve. Furthermore, a basic principle underscoring immigration reform is that actions taken due to being undocumented, such as working with a false ID, should not be roadblocks to eligibility for participation in a legalization program.

A Legalization System that Makes Sense and Is One Component of reform: A central component of immigration reform is legalizing people who are here and allowing them to earn the opportunity to become citizens. Such a program must be workable and not include requirements that cannot be met or would take decades to fulfill, impose excessive fees and fines, and would be difficult, if not impossible, for the government to implement. It also is important to remember that, while a central element of reform, legalization is only one component, and that comprehensive reform includes other components, such as family-based immigration, that should not be traded away.

Enforcement-First/Only Approach: Those who insist that immigration reform cannot take place until we secure our borders miss the point. Immigration reform is necessary to secure our borders. Legality needs to replace illegality to allow the government to focus on people who mean to do us harm, not those who are filling our labor market needs. A deal proposed during the negotiations would mandate first securing the U.S.-Mexico border and implementing a high-tech identification system for immigrant workers, and only afterwards allow immigrants to legalize their status, but only after years of waiting. These and other unrealistic enforcement triggers make no sense and are designed to meet political needs at the expense of solving the problem.

The initiatives noted above would move the debate in the wrong direction and destroy the kind of immigration reform that is needed to change the current system. We urge Congress and the Bush Administration to work in support of good reform.

The Immigrant Legal Resource Center (ILRC) is a national organization based in San Francisco that provides legal expertise on immigration law and policy, undertakes advocacy and educational initiatives and works with immigrants to help them engage in the democratic process.

Immigrant Legal Resource Center
1663 Mission Street, Suite 602
San Francisco, California 94103
415-255-9499
www.ilrc.org