



**FOCUSING ON THE SOLUTIONS:**  
KEY PRINCIPLES OF  
COMPREHENSIVE IMMIGRATION REFORM

**MARCH 2010**

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### **ABOUT SPECIAL REPORTS ON IMMIGRATION**

The Immigration Policy Center's *Special Reports* are our most in-depth publications which provide detailed analyses of special topics in U.S. immigration policy.

### **ABOUT THE IMMIGRATION POLICY CENTER**

The Immigration Policy Center, established in 2003, is the policy arm of the American Immigration Council. IPC's mission is to shape a rational national conversation on immigration and immigrant integration. Through its research and analysis, IPC provides policymakers, the media, and the general public with accurate information about the role of immigrants and immigration policy on U.S. society. IPC reports and materials are widely disseminated and relied upon by press and policymakers. IPC staff regularly serves as experts to leaders on Capitol Hill, opinion-makers, and the media. IPC is a non-partisan organization that neither supports nor opposes any political party or candidate for office. Visit our website at [www.immigrationpolicy.org](http://www.immigrationpolicy.org) and our blog at [www.immigrationimpact.com](http://www.immigrationimpact.com).

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# EXECUTIVE SUMMARY

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Nearly everyone agrees that our immigration system is badly broken and in urgent need of reform. Under the existing system people are dying at the border, immigrants are living and working in abject conditions, families trying to reunite legally are separated for many years, employers are unable to hire the workers that they need, U.S. workers suffer from the unlevel playing field shared with exploited immigrant workers, and law-abiding U.S. employers are in unfair competition with unscrupulous employers who increase profits by hiring cheap and vulnerable labor. Meanwhile, the United States continues to spend billions of dollars on enforcing these broken laws.

*“Focusing on the Solutions: The Key Principles of Comprehensive Immigration Reform”* is a companion piece to the Immigration Policy Center’s previous publication which focuses on the underlying problems within our immigration system. In *“Breaking Down the Problems, What’s Wrong with Our Immigration System?”* the Immigration Policy Center lays out key structural problems within immigration law, as well as the inadequate, enforcement-only responses that have given rise to our current immigration crisis. *Focusing on the Solutions* paper summarizes the key elements that must be included in a successful legislative package.

## THE PROBLEMS

The problems with our immigration system extend well beyond the 10-11 million unauthorized immigrants living and working within our borders. In order to resolve the problem of illegal immigration, we must understand the root causes of illegal immigration and the structural problems that current immigration laws present. The legal immigration system is inadequate to meet the needs of the U.S. in the 21<sup>st</sup> century.

- **Insufficient numbers of visas** are made available to bring in either high-skilled or less-skilled workers at the levels needed to meet the changing needs of the U.S. economy and labor market.
- **Family members** who are eligible for visas must wait up to 20 years to be reunited with family living in the United States.
- **Wage and workplace violations** by unscrupulous employers who exploit immigrant workers are undercutting honest businesses and harming **all** workers.
- **Inadequate government infrastructure** is delaying the integration of immigrants who want to become U.S. citizens.

The lack of a comprehensive federal solution has resulted in a range of enforcement-only initiatives that have cost the country billions of dollars, while doing little to impede the flow of unauthorized immigrants. In fact, the current immigration system’s structural failures, and the

inadequate or misguided responses to these failures, have led to the largest unauthorized population in our nation's history.

Most Americans understand that we cannot deport 10-11 million people or hope that they will choose to "self-deport." It is clear that current enforcement-only responses have not been effective and are not a realistic solution to the current crisis. The underlying flaws of the legal immigration system must be addressed in order to create a fair, humane, and practical immigration system for the 21<sup>st</sup> century—a system that is responsive to the needs of our economy and encourages legal behavior. Genuine immigration reform requires a thoughtful, coordinated approach which restores balance to the process and gives America the tools it needs to remain a leader in a rapidly changing world.

## THE SOLUTIONS

### ➤ **Legalization**

Requiring the 10-11 million unauthorized immigrants residing in the U.S. to register with the government and meet eligibility criteria in order to gain legal status is a key element of comprehensive immigration reform. This section examines key principals to a successful legalization program.

### ➤ **Employment Verification**

It is likely that Congress will transform the way employers verify the work authorization of their workers. Since this will affect immigrants and citizens alike, and because an error in the system can cost a worker his job and paycheck, it is important to make the system effective. This section lays out the must-haves for any broad employment-verification system and explains why a system like this must be implemented as part of broader immigration reform.

### ➤ **Enforcement**

Comprehensively reforming our broken immigration system will necessarily transform the role of immigration enforcement. Legalization of unauthorized immigrants already in the United States will result in a significantly smaller unauthorized population, and the creation of flexible legal channels for those immigrants we need will ensure that future flows of illegal immigration are minimal. However, there will continue to be a need to enforce our nation's immigration laws. The challenge is designing appropriate, effective enforcement mechanisms for a new, well-functioning legal immigration system. This section examines key principles for immigration enforcement within the context of comprehensive immigration reform.

### ➤ **Family**

Family-based immigration has always been a pillar of the U.S. immigration system. However, many close family members of U.S. citizens and legal permanent residents are currently waiting years, if not decades, to reunite with their loved ones. Reforming our broken immigration system will require us to transform our family-based immigration

system, clear out the backlogs, and allow law-abiding families to reunite with loved ones in a humane and reasonable timeline.

➤ **Future Flow**

Comprehensive immigration reform must address the future needs of the U.S economy and create a well-functioning and flexible system of permanent and temporary visas for both high-skilled and low-skilled workers. Policymakers must recognize that if we create a legal immigration system that functions well, there will be less pressure on immigrants to come to the U.S. illegally and for employers to hire unauthorized workers. Given the current weakened economy and high unemployment rates, it is difficult to estimate the U.S.'s future labor needs. However, the economy will eventually improve, and a reasonable, flexible legal immigration system must be put into place to fill our future labor needs. If the U.S. is to thrive in the globalized 21<sup>st</sup> century economy, employment-based immigration must be seen as a strategic resource that can both meet labor market needs and foster economic growth and competition while still protecting U.S. workers and improving wages and working conditions.

➤ **Naturalization and Citizenship**

Immigrant integration benefits everyone because it enables immigrants to realize their full potential, contribute more to the U.S. economy, and develop deeper community ties. While the United States encourages legal permanent residents to become citizens, there is no national strategy for facilitating integration and insufficient infrastructure to facilitate a smooth transition from immigrant to citizen. Failure to address this problem in the context of comprehensive immigration reform could lead to endless delays for the millions who currently seek services from USCIS and the millions more who will become part of the applicant pool following legalization. This section examines the benefits of a comprehensive integration strategy as well as key principles for naturalization and integration.

## **CONCLUSION**

In the long run, there is significant agreement over the key components of a truly comprehensive immigration reform package. Immigration reform is complicated precisely because there are so many interconnected pieces that must be addressed as whole, and because each of these pieces has its own political baggage, history, and constraints. Understanding the individual pieces and how they fit together is the first step in building one solution that works for everyone.

# I. EARNED LEGALIZATION

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We can expect every major piece of comprehensive reform legislation to tackle the issue of creating a legal status for the 10-11 million undocumented immigrants residing in the United States. Ultimately, most politicians and policy makers agree that practically, the U.S. cannot deport this population, and some kind of process for legalizing status is necessary. However, there remains a temptation to create high penalties in exchange for a green card because many politicians want to ensure that people have paid the price for coming to the country illegally. An overly punitive process, however, ultimately defeats the purpose of a legalization program because it will deter people from participating and potentially drive people further underground. A successful legalization program combines measured penalties with clear and achievable goals that will get the maximum number of people into the system, identify the relatively few who do not belong here based on criminal activity, and integrate those who can contribute their talents as quickly as possible.

**Legalization, when accompanied by comprehensive immigration reform, is beneficial to the nation. Taking care to get legalization right will pay off in a host of ways. If done correctly, legalization offers the following benefits:**

- It is part of the solution to ending illegal immigration as we know it, which allows federal, state, and local governments to focus scarce resources on other issues.
- It benefits the economy by transforming undocumented immigrants into legal workers, thereby leveling the playing field for all U.S. workers and employers.
- It is critical to fully integrating immigrants into our communities.
- It enables legalized workers to better invest in their education and future and become professionals, homeowners, taxpayers, consumers, and entrepreneurs.
- It promotes national security and public safety by allowing DHS and the police to focus resources on threats to U.S. communities' safety and security.

The following key principles should be considered when devising a structure:

- **Cover the maximum number of people possible.** Covering as many of the 12 million undocumented immigrants as possible makes sense from a humanitarian perspective; it also makes sense from a good government perspective. If one of the objectives of legalization is to minimize illegal immigration, any program that leaves a sizeable undocumented population in the U.S. will fail. Step one toward broad legalization is setting the eligibility cut off date (the date by which the qualifying immigrant had to have been in the U.S.) as close to the date of enactment as possible so the majority of the current undocumented population will be eligible.

- **Create a simple and straightforward process that measures prospective, rather than retrospective, eligibility.** A straightforward registration program without overly onerous, politically motivated initial requirements will maximize the likelihood of success. Once a law has been enacted, the priority is moving quickly, getting people into the system, and minimizing fraud. Creating overly burdensome documentation requirements will require more time to gather, review, and adjudicate. Similarly, attempting to make people pay huge fines or criminal penalties up front will only slow down the process. Basic proof of identity and a criminal background check should be enough to bring an applicant into the system, with more rigorous requirements tied to later stages in the program.
  
- **Make the program about integration into the community and a commitment to becoming a lawful permanent resident.** Upon registration, applicants should be on a path that leads to a green card, provided they meet specified criteria. The criteria that most seem to measure commitment—paying taxes, learning English, working hard or going to school, staying out of trouble—can be built into the requirements for successful completion of the program, but the trade off must be legal status that can eventually lead to citizenship. Without the promise of a green card, legalization is nothing more than an expanded temporary worker program, running the risk of creating a second-class citizen with the right to work, but with no incentives to put down roots and no opportunity to remain lawfully. Newly legalized immigrants must not be granted a distinctive status that singles them out from other legal immigrants, inviting discrimination and abuse.
  
- **Minimize the impulse to punish people.** There is likely to be considerable political pressure to impose high fines, require people to leave the country before applying, limit the ability to bring in immediate family, or complete other requirements in exchange for legal status. While these measures sound tough, they are counterproductive. In order to achieve the broadest possible legalization, the eligibility criteria and evidentiary standards must be achievable by a maximum number of people. History has shown that these types of harsh measures will not shield proposals from charges of “amnesty.” Nothing is gained, but much can be lost, if we succumb to the belief that a punitive legalization process will change the underlying issues.
  
- **Coordinate with the groups with close ties to immigrant communities.** In order to be successful, the government will need to partner with community-based organizations who know immigrant communities best. These groups will be critical to outreach, education, and application preparation and must receive funding in order to increase their capacity to implement legalization. It will be critical to inform the immigrant community about the program, eligibility standards, and application requirements. Outreach and education must be done in partnership with community-based organizations and must be done in multiple languages.
  
- **Make fees and fines count.** Although USCIS is fee-funded, implementing a large legalization program will require an up-front investment in the agency prior to the first



applications being filed. Congress must also balance the need for funding the program with the desire to keep costs reasonable to ensure maximum participation. While application processing fees and monetary penalties are certain to be included, it is important to develop an affordable cost structure that encourages individuals to come forward rather than deterring participation. In many past proposals, applicants have been able to pay any fines in increments and those monies have been used, in part, to help support state and local initiatives that help people meet their eligibility requirements. Thinking carefully about how to structure any payments requires working with affected communities and the government to maximize the use of limited financial resources.

- **Don't create Catch-22s.** In order to achieve the broad goals of legalization and ensure that the maximum number of people will be legalized, it is important that immigrants not be ineligible because they are undocumented. For example, many unauthorized immigrants have used false documents and worked without authorization. Violation of the law for the purpose of remaining in the U.S. illegally cannot make an individual ineligible for legalization. Applicants for legalization must not fear that coming forward will result in their deportation or any other penalty. Applicants must feel confident that evidence provided as part of the legalization program will not be used for immigration enforcement purposes, except in the case of egregious violations of the law. Any potential negative consequences of applying for legalization must be made clear through community outreach and education.
- **Building upon existing laws and proposals that make sense.** A legalization program does not have to be built from scratch. Many of the basic components can be found in legislation introduced over the last decade. Other more specialized programs, such as AgJobs and the DREAM Act, are popular legislative proposals that can address the needs of special communities.

## II. EMPLOYMENT VERIFICATION

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Turning off the job magnet for unauthorized workers is a key part of comprehensive immigration reform, and the creation of a system to verify the work authorization of all workers is likely to be an element of any comprehensive immigration reform bill. The current I-9 system, which was created as part of the Immigration Reform and Control Act (IRCA) of 1986, requires all workers to provide their employer with documents that prove identity and work authorization. Already, that system is becoming less paper-based as it evolves into an electronic employment-verification system (EEVS). The U.S. government's current EEVS program, known as "E-Verify," is mostly voluntary and relatively small.

Over the past several years, immigrant advocates, privacy experts, and government agencies have identified potential problems associated with E-Verify that impact foreign-born workers as well as U.S. citizens. Since EEVS affects every single person working in the United States—immigrants and citizens alike—and because an error in the system can cost a worker his job and his paycheck, it is important to make the system workable and effective. Employment verification, when accompanied by comprehensive immigration reform, can be a useful immigration-enforcement tool. Taking care to get employment verification right is essential. Before expanding the EEVS program, policymakers must acknowledge the shortfalls of the current system and ensure a better-designed program that will protect both foreign-born and native-born workers.

### **About E-Verify**

E-Verify is a federal, web-based program through which U.S. businesses can attempt to verify the work authorization of new hires. As of February 2009, E-Verify is a voluntary system, except where state laws require businesses to register to use E-Verify, as well as a few other exceptions in which the federal government has made E-Verify mandatory.

Employers transmit identity information through E-Verify, where it is electronically checked against both Social Security Administration (SSA) and Department of Homeland Security (DHS) databases. The system then either confirms to the employer that the worker is employment-authorized or it issues a "tentative nonconfirmation" (TNC) notice indicating that the databases cannot immediately confirm that the worker is employment-authorized. If the employer receives a TNC, the worker then has eight federal working days from the issuance of the TNC to contest the finding with SSA or DHS. If the worker does not contest the finding, the TNC becomes final and the employer must terminate the worker or risk being found in violation of immigration laws.

Any new or expanded electronic employment-verification system (EEVS) must address the following broad issues:

- **The data in government databases must be accurate and regularly updated.** The current DHS and SSA databases upon which the E-Verify system is based are error-ridden. Database errors can mean that U.S. workers will lose their jobs and their paychecks. Data accuracy is the key to a well-functioning verification system.
- **There must be adequate protections for all workers.** There will always be some level of error in the system because of mistakes that people make when entering data, or because of deliberate misuse of the system. However, we need to ensure that there is a process in place for anyone who is mistakenly told he is not work authorized.
- **The government must have adequate resources to run the system.** Making electronic employment verification mandatory will mean tens of millions of workers and employers will use the system every year. The government agencies responsible for implementing the system must have enough funding and personnel to handle the huge increase in use.

**The following are principles for employment verification:**

- **Comprehensive immigration reform:** While there will be pressure on Congress to expand E-Verify outside of comprehensive immigration reform, a mandatory EEVS must not be implemented unless it is part of comprehensive immigration reform that also includes a legalization program for current unauthorized immigrants, creates flexible channels through which future immigrants may enter the United States legally, and reduces the incentives to hire unauthorized workers. Employment verification alone does not address the structural problems with our current immigration system, as outlined in IPC's *Breaking Down the Problems, What's Wrong with Our Immigration System?*
- **Apply to New Hires Only:** Currently, approximately 160,000 employers are registered with E-Verify—a tiny percentage of the 7.4 million employers in the United States. Approximately 8.5 million queries were run through E-Verify in Fiscal Year 2009. A mandatory system would mean that roughly 60 million new hires per year would have to be run through the system—a huge increase. Re-verification of the entire workforce would place an even greater burden on workers, businesses, and the government agencies responsible for implementing the system.
- **Data Accuracy:** Every effort must be made to ensure that the data accessed by employers is accurate, continuously updated, and subject to review. The SSA database alone has a 4.1% error rate—amounting to 17.8 million discrepancies, of which 12.7 million pertain to native-born U.S. citizens. The DHS databases also have high error rates. No U.S. citizens or legal immigrant workers should be denied employment because of errors in the database.

- **Documentation:** The documents that workers are required to present must be documents that all U.S. citizens and legal workers will reasonably be able to obtain. Currently, more than 13 million American adults cannot easily produce documentation proving their citizenship. Some past proposals would have required workers to produce a REAL ID-compliant driver's license. However, no state has fully implemented the REAL ID Act, and many states have refused to implement the law. As a result, no Americans currently have REAL IDs.
- **Worker Protections:** There must be rigorous oversight of the program and significant penalties for employer misuse of the program. Through experience with the I-9 system and E-Verify, we know that some employers discriminate against workers who sound or appear "foreign." Other employers pre-screen workers, and some retaliate and take adverse employment actions (such as restricting assignments or training) before the system provides a final response. Some employers also fail to inform workers of their rights under EEVS.
- **Complaint and Redress Procedures:** If a worker is adversely affected by an employer's misuse of the program, or because of a database error, a clear complaint process must be available so the worker can report the incident and receive redress.
- **Due-process Protections:** Individuals must be allowed to view their own records and contact the appropriate agency to correct any errors that exist. Administrative and judicial review must be available so that workers are able to seek compensation from the government if an error in a government database results in denial or termination of employment.
- **Privacy Protections:** The amount of data to be collected and stored must be minimized, and penalties must be created for collecting or maintaining data not authorized in the statute. Furthermore, there must be serious penalties for use of EEVS data to commit identity fraud, unlawfully obtain employment, or for any other unauthorized purpose.
- **Resources:** Sufficient resources will be necessary to implement and maintain a new or expanded EEVS, including additional personnel to handle the enormous increase in queries associated with a mandatory system. Without resources to upgrade and maintain the databases, and to hire and train personnel, a well-functioning, mandatory, employment-verification system will be impossible. The cost of the program cannot fall disproportionately on immigrants, employers, or U.S. citizens.
- **Outreach:** Significant community outreach and education must precede any expansion of EEVS in order to inform both employers and workers about how the system works, their rights and responsibilities under the new system, and avenues for redress in cases of error or unfair employment practices.

### III. ENFORCING IMMIGRATION LAWS

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For years the U.S. government has addressed unauthorized immigration primarily through the lens of deportation and removal, pursuing enforcement-only policies that have not effectively curbed unauthorized immigration. An increase of personnel and technology along the U.S.-Mexico border has been accompanied by increased worksite enforcement in the interior of the United States. In addition, U.S. Immigration and Customs Enforcement (ICE) has partnered with state and local police agencies and jails to identify and apprehend immigrants and to remove them from the country. None of these efforts has resulted in a significant decline in the size of the unauthorized population, but these enforcement policies and priorities have had devastating impacts on U.S. families and communities.

Comprehensively reforming our broken immigration system will necessarily transform the role of immigration enforcement. Legalization of unauthorized immigrants already in the United States will result in a significantly smaller unauthorized population, and the creation of flexible legal channels for those immigrants we want and need will ensure that future flows of illegal immigration are minimal. However, there will continue to be a need to enforce our nation's immigration laws. The challenge is designing appropriate, effective enforcement mechanisms for a new, well-functioning legal immigration system.

Border enforcement will always be necessary for immigration enforcement and national security. However, the borders must be recognized as gateways through which legitimate transnational commerce and travel are encouraged. The U.S. government should focus its enforcement efforts on combating genuine security risks along our borders. Comprehensive immigration reform also means enforcing current laws in a manner that ensures fair and humane treatment for all. Due process and humane policies must be restored at every stage of the process, including during worksite and home raids. Finally, enforcement must include employment law enforcement. Comprehensive reform must recognize that strong employment protections for all workers reduces the incentive for unscrupulous employers to hire and mistreat unauthorized workers, thereby improving wages and working conditions for all workers.

**A comprehensive immigration-enforcement strategy would provide the following benefits to the United States:**

- Allow law-enforcement agencies along the border and in the interior of the country to focus on genuine security risks, as well as smuggling, trafficking, and other serious criminal activity.
- Ensure that all persons are treated humanely and fairly, and that human and civil rights are respected throughout the enforcement process.

- Reduce the incentive for unscrupulous employers to hire and exploit unauthorized workers.
- Ensure that people who are arrested have access to due process for determining their right to remain in the United States and to not be detained.

**The following are principles for immigration enforcement within the context of comprehensive immigration reform:**

### **Border Enforcement**

- **Make border-enforcement policies, projects, and agencies accountable to the communities in which they operate.** This includes the creation of a U.S.-Mexico Border Review Commission, a mandatory Congressional Report on Border Deaths, significant increases in training for the Border Patrol, and regular consultations with local communities.
- **Differentiate between border security and enforcing immigration laws.** Although border enforcement necessarily involves preventing illegal border crossings, it also encompasses a host of other issues that do not necessarily involve immigration. We must provide resources that address cross-border drug trafficking, gun running, and border violence to the appropriate law-enforcement agencies.

### **Interior Enforcement**

- **Improve detention policies and conditions.** Detention standards—including guidelines relating to transfers, language access, medical care, access to counsel, telephone access, and religious practice and visitation—must be codified and applied to all locales in which ICE detainees are held. There must be additional oversight of detention facilities to ensure compliance with detention standards.
- **Legislation should expand judicial discretion to consider individual circumstances so that each immigration case can be evaluated on its own merits.** Judges and Department of Homeland Security (DHS) officials should be able to consider the individual circumstances of each case when making a determination about a person's liberty. Mandatory detention categories should not be expanded, nor should removal grounds be added or expanded. The detention statute should be modified to enhance release and parole options for individuals who pose no flight risk or danger to public safety. Detention should only be a last resort and, in every case, the burden should be on the government to demonstrate that detention is necessary.
- **Ensure access to counsel and legal information.** Legislation should provide for national expansion of the legal orientation presentation program, and other programs to secure legal counsel for all detained individuals and for vulnerable populations, including children and mentally ill individuals who are unable to meaningfully participate in their

removal proceedings. Pilot programs for exploring government-funded positions for “Guardians ad Litem” and legal counsel for vulnerable populations should be included.

- **All individuals should have their fair day in court.** Legislation should ensure meaningful judicial and administrative review and provide essential resources and personnel necessary to prevent delays in resolving cases in immigration court.
- **The federal government should be in charge of immigration enforcement.** The established doctrine of federal pre-emption of immigration enforcement must be followed. Before entering into any partnerships with state and local police agencies, DHS and Congress must assess the impact of that partnership on the local community, the impact on the immigrant population, the potential for racial profiling and civil-rights violations, and the impact on DHS’s ability to fulfill its enforcement priorities. Further, meaningful oversight and adequate supervision of local law-enforcement agencies by DHS is necessary.
- **Enforce civil-rights laws and protections for noncitizens during all enforcement actions.** Provide civil-rights training for all immigration officials and local law-enforcement officers enforcing immigration law. Create independent oversight mechanisms to monitor and enforce the protection of civil rights, including prohibitions against racial and ethnic profiling.

### **Enhanced Enforcement of Laws Protecting Workers**

- **Make enforcement of labor laws a priority.** The Department of Labor must be provided with additional resources to investigate and prosecute wage and hour violations, ensure worksite safety, and enforce other protections designed to prevent employers from taking advantage of workers. Increasing this kind of enforcement would directly affect unscrupulous employers who frequently rely on unauthorized workers.
- **Establish clear rules that give precedence to labor investigations where there are potential conflicts between labor and immigration-enforcement issues.** Immigration enforcement must not interfere with ongoing labor disputes or with investigations into labor law violations. DHS must have a policy which requires that if ICE discovers employment or labor law violations in the course of its worksite enforcement actions, those violations are reported to the appropriate government labor or employment-rights agency.
- **Hold employers accountable for employment- and labor-law violations.** Ensure confidentiality for those who cooperate with employment and labor-law investigations, and grant visas and an opportunity for immigrant workers to petition for them and for work authorization, so that they can cooperate with investigations into workplace law violations.

## IV. FAMILY IMMIGRATION

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Family unification has always been a pillar of the U.S. legal immigration system. Since the first European settlers landed in the U.S., immigrants have come with their families to build better lives in America. Each year the U.S. grants visas to a limited number of people who have close family ties to U.S. citizens and legal permanent residents (LPRs or green card holders). Family-based immigration is capped at 480,000 visas per year. The immigration system grants green cards to an unlimited number of parents, spouses, and minor children of U.S. citizens. The only other family members who qualify are spouses and minor children of LPRs and siblings of U.S. citizens. These families must go through the family preference system, which limits the number of visas available for each “preference.” Because there are more people who qualify than visas available through the preference system each year, many close family members of U.S. citizens and legal permanent residents are waiting in long backlogs. For example, spouses and minor children of legal permanent residents must wait 7 to 10 years to unite their families. Yet each year some of these visas are lost rather than going to qualified applicants.

### **Fixing the family-based immigration system is important because:**

- A well-functioning family-based immigration system is a critical component of ending illegal immigration because it removes a key motivation for entering illegally.
- Family-based immigrants work, become entrepreneurs, and contribute to our economy. Research has shown that family-based immigrants possess important skills and are adaptable to the labor market.
- Research has shown that family-based immigration enhances an individual’s ability to integrate and thrive in the U.S. Immigrant families are vital emotional, psychological, and cultural resources that shelter and sustain family members, as well as entire immigrant communities. Stripping away this support would foster social isolation and disconnection among immigrants rather than acculturation.

### **The family-based immigration system interacts with the legalization component of comprehensive immigration reform:**

- Clearing the backlogs of law-abiding families who have been waiting to come legally to the U.S. ensures that immigrants who came illegally are not given preferential treatment.
- Failure to address this problem leads to numerous complications in other immigration categories. For instance, the failure to allow family unification under the Immigration Reform and Control Act of 1986 (IRCA) legalization program led many desperate family members to enter the United States illegally, helping create the seeds of our current immigration crisis.



## Principles for reform of the family immigration system:

- **Family unification must remain a fundamental pillar of U.S. immigration policy.** Proposals that sacrifice family immigration for the sake of employment-based immigration create an unfair and erroneous dichotomy. Family immigrants work and contribute to the U.S. in many ways. Both the family-based and employment-based immigration systems can be fixed without sacrificing one for the other.
- **The current backlog of family-based immigrants must be cleared, and law-abiding families must be reunited in a humane and reasonable timeline.** There are several possible options to clear the backlogs and promote family unification, including moving spouses and minor children of LPRs into the “immediate relatives” category, not counting immediate relatives against the family cap, and increasing the per-country caps. Any combination of these or other solutions must be part of comprehensive immigration reform if it is truly going to fix the broken immigration system.
- **The spouses and minor children of legalized immigrants must be issued visas at the time of the primary applicant’s legalization.** The IRCA legalization program did not allow for spouses and minor children of legalization applicants to legalize as derivatives. As a result, special provisions had to be put into place later to protect them from deportation. Also, when legalized immigrants became LPRs and petitioned for their spouses and minor children, the backlogs in those categories skyrocketed. Including spouses and children in the legalization provisions will help to prevent future backlogs.
- **Unused and unclaimed family-based visas must be recaptured, and a mechanism to ensure that future unused visas are not wasted must be created.** Congress authorizes a set number of visas to be made available annually. When these visas go unused, the problems with backlogs only worsen. Recapturing visas would not overstep the numerical limits set by Congress, but it would alleviate some of the consequences of visa oversubscription.
- **The numerical caps on family-based immigration must be revisited and brought in line with current realities.** The last adjustments to the numerical caps were made in 1990. These numbers must be reconsidered and brought up to 21<sup>st</sup> century requirements.
- **USCIS must receive the resources necessary to resolve backlogged family immigration cases and ensure that processing backlogs do not reoccur.** True reform means eliminating the circumstances that led to the problems in the first place. U.S. Citizenship and Immigration Services (USCIS) must have the resources it needs to unite families and avoid future problems.

## V. FUTURE IMMIGRATION FLOW

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One of the greatest challenges in immigration reform is the need to realistically assess our future employment-based immigration needs. This includes permanent and temporary visas, high-skilled and low-skilled workers. Many people agree that our current legal immigration flow is drastically out of sync with America's labor needs and the global realities of the 21<sup>st</sup> century. Meanwhile, some employers have been able to misuse the broken system to the detriment of U.S. and foreign workers. Policymakers must recognize that if we create a legal immigration system that functions well, there will be less pressure on immigrants to come to the U.S. illegally and for employers to hire unauthorized workers. Given the current weakened economy and high unemployment rates, it is difficult to estimate the U.S.'s future labor needs. However, the economy will eventually improve, and a reasonable, flexible legal immigration system must be put into place to fill our future labor needs. If the U.S. is to thrive in the globalized 21<sup>st</sup> century economy, employment-based immigration must be seen as a strategic resource that can both meet labor market needs and foster economic growth and competition while still protecting U.S. workers and improving wages and working conditions.

### **Improving the visa system would provide the following benefits to the United States:**

- Create a more reliable system for determining the number of employment-based visas needed to supplement the U.S. workforce.
- Allow Congress to make decisions about visa numbers based on additional research and data about U.S. labor market conditions.
- Better position the U.S. in the global economy and the global labor recruitment arena.
- Remove the incentive for immigrants to come to the U.S. illegally as well as the incentive for employers to hire unauthorized workers.
- Remove the incentive for U.S. employers to work around, or to abuse, the visa system.
- Reduce exploitation, discrimination, and other abuse of U.S. and foreign workers.

### **The following are principles for visa reform within the context of comprehensive immigration reform, and apply equally to high-skilled and lower skilled labor flows.**

- **Create a more flexible visa system that more accurately adjusts to the economy and labor market conditions.** The current number of permanent employment-based visas available each year was set by Congress in 1990 and has not been adjusted since. The number of temporary visas has been adjusted infrequently. This current system does not have the flexibility to nimbly adjust the number of visas available to align with changing economic conditions. A reformed visa system would enable the U.S. to better

manage our legal immigration system by allowing immigration flows to rise and fall during periods of prosperity or job scarcity in order to maximize the economic benefits of immigration. Some have proposed a standing commission to examine labor market conditions and make recommendations to Congress on a more regular basis. Others suggest that employers should play a larger role in determining the legitimate demand for foreign labor. Whether by a commission or some other mechanism, comprehensive immigration reform must include a more flexible decision-making process.

- **Conduct research and gather and analyze data about worker shortages, labor market trends, and other critical factors in order to aid decision making.** Under the current system, Congress sets visa numbers with little regard for actual labor market conditions and needs. A system should be created so that experts have access to reliable data about future projections of labor needs. Congress should identify and require government agencies to track and produce accurate data on key factors including national and regional needs, industry-specific trends and needs, unemployment rates, and wages, working conditions, and recruitment of U.S. workers.
- **Protect worker and employer interests by streamlining the transition from temporary to permanent immigration status.** While many workers enter the United States on long-term but temporary visas, such as high skilled H-1B visas, it is often difficult to become a permanent resident because of backlogs, bureaucracy, and lack of protections (such as work authorization) in the interim. Similarly, only 5,000 permanent visas are available each year for lower skilled workers, making it virtually impossible for someone who comes on a temporary visa to transition to a more permanent status. This lack of flexibility ensures that good workers who want to stay and contribute often have no choice but to return home or go elsewhere, making American companies less competitive.
- **Be smart about the allocation of permanent visas.** Similar to the family-based system, there are backlogs for employment-based green cards, especially for temporary workers transitioning to permanent status. While the key problem is a lack of available visas, it is exacerbated by the government's failure to use the full number of available visas each year as well as the disjointed way visas are allocated under the statute. For instance, the family members of employment-based immigrants count against the visa cap, effectively reducing the number of visas that are available for workers. Students educated in U.S. universities, particularly in the science and technology fields, often return home rather than stay in the U.S. because the wait for a visa is so long. Fixing these problems can improve American competitiveness and increase productivity by ensuring that we maximize our use of available visas.
- **Re-examine current temporary worker programs.** Temporary worker programs should be used to fill real temporary needs in the labor force. Current caps on the number of visas available should be reconsidered in light of 21<sup>st</sup> century realities. Measures to protect both foreign and U.S. workers and level the playing field should be taken, such as enhancing temporary workers' ability to change employers and adjust to permanent

residency, improving recruitment requirements for U.S. workers, and enhancing labor protections. Fraud and abuse of these programs should be targeted for enforcement.

- **Ensure that any changes in our workforce immigration programs are matched with strong economic development programs for native-born workers.** Importing foreign workers should not be the primary solution to filling gaps in the labor market, achieving growth, and improving competitiveness. Legislation should provide provisions to educate, train, recruit, relocate, and hire U.S. workers to fill positions in the labor force whenever possible.

## VI. NATURALIZATION AND INTEGRATION

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Most Americans want immigrants to fully integrate in the U.S., and most immigrants want to be Americans and fully participate in social and civic life. We can expect naturalization and integration programs to be an important part of comprehensive immigration reform. Immigrant integration benefits everyone because it enables immigrants to realize their full potential, contribute more to the U.S. economy, and develop deeper community ties. While the United States encourages legal permanent residents to become citizens, there is no national strategy for facilitating integration and insufficient infrastructure to facilitate a smooth transition from immigrant to citizen. Failure to address this problem in the context of comprehensive immigration reform could lead to endless delays for the millions who currently seek services from USCIS and the millions more who will become part of the applicant pool following legalization.

Questions of naturalization and integration are unique within the comprehensive immigration reform debate because the issues involved are less about reforming existing law and more about generating support for sufficient planning and resources to create a more robust integration program. Efforts to prioritize integration and naturalization, to streamline current application processes and to revise existing policies and procedures can be accomplished through administrative action. The most urgent changes needed relate primarily to increasing the appropriations given to DHS to promote integration, improve services, and reduce the high fees applicants currently pay for immigration benefits.

### **A comprehensive integration strategy would provide the following benefits to the U.S.:**

- Create a reliable way to welcome lawful immigrants to the U.S. and offer them information to help them navigate their way in their first years.
- Provide the government with the tools and funds necessary to ensure that people currently applying for naturalization are not harmed by a legalization program and that those who apply for naturalization following legalization do not face needless delays.
- Ensure that immigrants who want to be U.S. citizens can do so in a timely and efficient manner, thus paving the way for their full participation in U.S. political and civic life.
- Provide USCIS with a steady, reliable funding source which allows them to better allocate funding and respond to special resource needs that arise.

### **The following are principles for naturalization and integration within the context of comprehensive immigration reform:**

- **Develop a national integration plan.** Before comprehensive immigration legislation is enacted, the federal government should announce a coordinated strategy for

encouraging integration and naturalization. Ideally, a national integration plan would be run out of the White House, and draw upon executive branch agencies such as the Office of Citizenship in USCIS, the Office of Refugee Resettlement in HHS, and the Department of Education to prioritize integration. Resources need to be invested in language acquisition, literacy, and civics education.

- **Engage in long-range planning within DHS to coordinate the flow of applications arising from comprehensive immigration reform.** Because comprehensive immigration reform envisions not only legalization of the undocumented, but reductions in existing family and employment backlogs, petitions and applications for visas and other benefits will rise dramatically. The government must be prepared to serve a variety of populations at once and must ensure that those who will be applying for naturalization in the next few years are not adversely affected by demands in other parts of the system. The government should move now to implement improvements in benefit application processing to prevent future application backlogs and to enhance customer service.
- **Ensure that the various provisions of CIR legislation complement rather than compete with each other.** Congress can ensure that legalization and naturalization functions complement rather than compete for funding by carefully thinking through the requirements for each. For example, while legalization programs have generally required applicants to prove some level of English proficiency, the measure of proficiency cannot be greater than what available services can reasonably provide. Any legalization requirements must be pegged to sufficient funding for English and civics classes. A portion of any fees or fines should be allocated to pay for such programs.
- **Create a mechanism for funding USCIS that does not rely solely on application fees.** In the context of comprehensive immigration reform, Congress must recognize the tremendous costs associated with processing millions of applicants. While applicants should be required to pay their fair share, a serious discussion about what that really means needs to take place. Ideally, USCIS should be able to rely on a combination of fees and appropriated monies to maintain high-quality services. In tough economic times it may seem counter-intuitive to ask for additional appropriations, and yet many of the costs currently borne by individual applicants are really costs that should be viewed as investments in our immigration infrastructure. At a minimum, Congress should allocate sufficient funds to help the agency cover the costs associated with building up the staff necessary for legalization, but it should also ensure that it puts into place mechanisms that will keep the agency running.
- **Engage state and local stakeholders.** State and local governments play an essential role in the integration of immigrants. A proactive immigrant integration strategy must bring together state and local stakeholders to address the needs of immigrant communities and develop strategies to integrate this population. In addition to impact aid for communities experiencing a growth in their immigrant population, the federal government must direct resources for integration efforts and programs that welcome newcomers.