Comprehensive Immigration Policy Reform: Challenges and Prospects for the Future

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Rapid Rise in Settlement Since the 1970s

Source: Migration Policy Institute, Washington, DC
Ten Source Countries with the Largest Populations in the U.S., as Percentages of the Total Foreign-Born Population: 2009

![Pie chart showing the distribution of the foreign-born population by source country](chart)

*Source: Migration Policy Institute, Washington, DC*

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Foreign-born Population by Legal Status, 2010
*(population in millions)*

<table>
<thead>
<tr>
<th>Legal Status</th>
<th>Population (millions)</th>
<th>Share of Foreign Born</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total foreign born</td>
<td>40.2</td>
<td>100%</td>
</tr>
<tr>
<td>Naturalized citizens</td>
<td>14.9</td>
<td>37%</td>
</tr>
<tr>
<td>Legal permanent resident aliens</td>
<td>12.4</td>
<td>31%</td>
</tr>
<tr>
<td>Legal temporary migrants</td>
<td>1.7</td>
<td>4%</td>
</tr>
<tr>
<td>Unauthorized immigrants</td>
<td>11.2</td>
<td>28%</td>
</tr>
</tbody>
</table>

*Source: Pew Hispanic Center estimates based on augmented March Supplements to the Current Population Survey.*
Estimates of the U.S. Unauthorized Population

Key Components of Federal-Level
“Comprehensive Immigration Reform”

- Enforcement
  - Border control
  - Employer verification
  - Penalties for past unlawful entry
  - Background checks
- Legalization
  - Path to citizenship
  - Civic training
- Changes to visa system
  - Greater flexibility to meet market demands
  - Guest worker / temporary visas
  - Family reunification
Prospects for Comprehensive Immigration Policy Reform

Randomly selected Mexican immigrants without documentation, north-central Indiana, September of 2008 (N=189)

“Would you support or oppose a program to give immigrants without documentation the right to live in the U.S. legally if they pay a fine and have their background checked to make sure they are not involved in criminal activities?”

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>94%</td>
</tr>
<tr>
<td>No</td>
<td>3%</td>
</tr>
</tbody>
</table>

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Clearly, immigrants who would be most directly affected by comprehensive reform are quite supportive...

Moves towards Comprehensive Policy Reform, Late-90s - Early-00s

- Second Clinton term (‘97-00)
  - Easing of some restrictions on seeking asylum
  - AgJOBS program; combined legalization for undocumented agricultural workers (favored by labor unions) with reforms to simplify guest-worker visa procedures (favored by employers)

- First nine months of 2001
  - Congress allows undocumented immigrants who were otherwise eligible for green cards to apply for residency without leaving the country
  - Bipartisan groups in U.S. House and Senate introduce versions of the Development, Relief, and Education for Alien Minors (DREAM) Act, which would legalize certain unauthorized youth.
Wednesday, 5 September 2001, Guardian newspaper report:

“Mexico goes for the whole enchilada
The president meets George Bush this week in a bid to secure a better deal for the millions of his compatriots living illegally in the US…”

“Whole enchilada” = path to legalization + bilateral guest worker program + joint border control initiative

Another casualty of the 9/11/01 attacks: comprehensive immigration policy reform

• Terrorists entered U.S. with student and visitor visas
• Anti-terrorism became the dominant frame for policymakers
  – Federal immigration services moved from Department of Justice to newly-created Department of Homeland Security
  – USA PATRIOT Act required FBI to provide criminal records to officials during visa screening
Policymaking in the mid-00s

- In January, 2004, G.W. Bush identified immigration reform as a top legislative action in the State of the Union address, along with tax cuts and Social Security reform
- But Bush never sent Congress a specific proposal
- U.S. House stepped into the vacuum with Border Protection, Antiterrorism, and Illegal Immigration Control Act; Rep. Sensenbrenner (R-WI) chief sponsor
  - Passed in party-line vote, but did not pass in the Senate
  - Increased fencing along US-Mexico border
  - Greater criminal penalties for undocumented immigrants
  - Employer verification requirements
  - Leading cause behind “Immigrant rights” mobilization in 2006

Continuing Legislative Stalemate over Comprehensive Immigration Policy Reform

- President Bush, Senator Jon Kyl (R-AZ), and Senator Kennedy (D-MA) collaborated on “Secure Borders, Economic Opportunity, and Immigration Reform Act of 2007”
  - Limited legalization provisions
  - Tougher worksite monitoring
  - New visa “points” system
  - Never made it out of the Senate
- Members of the Congressional Hispanic Caucus offered various comprehensive bills following the 2008 elections
- In 2010 and again just last month, Senator Menendez (D-NJ) submitted a comprehensive reform bill
- DREAM Act fails to pass both chambers in December, 2010
- Renewed emphasis on enforcement procedures; immigrant deportation now at an all-time high
Why No “Comprehensive” Policymaking?

• “Enforcement-only” approaches to immigration require little new legislation, as opposed to “comprehensive” policy

• Difficult to disagree with “law enforcement,” but legalization proposals and visa reforms are complex, potentially polarizing

• Electoral considerations
  – Ambivalence in public opinion
  – Generally low turnout among Latinos
  – Mobilization of nativist movements

On contemporary public opinion: FOX News/Opinion Dynamics Nationwide Polls (N = approximately 900 registered voters per survey)

"If it were possible to locate most illegal immigrants currently in the United States, would you favor deporting as many as possible or would you favor setting up a system for them to become legal residents?"

<table>
<thead>
<tr>
<th></th>
<th>Deport as many as possible</th>
<th>System for legal residency</th>
<th>Unsure</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>%</td>
<td>%</td>
<td>%</td>
</tr>
<tr>
<td>7/27-28/2010</td>
<td>45</td>
<td>49</td>
<td>7</td>
</tr>
<tr>
<td>5/12-13/2009</td>
<td>43</td>
<td>50</td>
<td>7</td>
</tr>
<tr>
<td>6/5-6/2007</td>
<td>39</td>
<td>51</td>
<td>9</td>
</tr>
</tbody>
</table>
What kind of legalization procedures might be preferred? Findings from the 2008 “American National Election Study”

Citizens of other countries who have come to live in the United States without the permission of the U.S. government are called “illegal immigrants.” Do you FAVOR, OPPOSE, or NEITHER FAVOR NOR OPPOSE allowing illegal immigrants to work in the United States for up to three years, after which they would have to go back to their home country?

<table>
<thead>
<tr>
<th></th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Favor</td>
<td>279</td>
<td>24.8</td>
</tr>
<tr>
<td>2. Oppose</td>
<td>638</td>
<td>56.7</td>
</tr>
<tr>
<td>3. Neither favor nor oppose</td>
<td>208</td>
<td>18.5</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1125</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

What kind of legalization procedures might be preferred? Findings from the 2008 “American National Election Study”

Do you FAVOR, OPPOSE, or NEITHER FAVOR NOR OPPOSE the U.S. government making it possible for illegal immigrants to become U.S. citizens?

<table>
<thead>
<tr>
<th></th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Favor</td>
<td>555</td>
<td>49.1</td>
</tr>
<tr>
<td>2. Oppose</td>
<td>387</td>
<td>34.2</td>
</tr>
<tr>
<td>3. Neither favor nor oppose</td>
<td>189</td>
<td>16.7</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1132</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>
Looking forward...

- Court-induced action?
  - Individual states stepping into federal policy arena
  - Judicial challenges could force Congress and the Obama administration to act
- Business-induced action?
  - As economy recovers, need for semi-skilled workers will almost certainly increase
  - Pressure from business community could prompt the federal government to revisit comprehensive reform
- Church-induced action? Party-induced action?

Stories from the states: Arizona

*SB1070 declares that “the intent of this act is to make attrition through enforcement the public policy of all state and local government agencies in Arizona”*

- Direct inquires from law-enforcement officials during any stop or arrest
- Criminalizes failure to carry papers
- Illegal for undocumented to solicit work in public
- Arrest without warrant possible for persons believed to be “removable from the United States.”
- Unlawful to “transport, move, conceal, harbor, or shield from detection” any undocumented immigrant

Essence of SB1070: violations of federal administrative law → violations of state-level criminal law
Current status of SB1070

• July, 2010: federal district court issues preliminary injunction
• April, 2011: US Court of Appeals upholds injunction. Following provisions stopped:
  – Requirement that police officials inquire about immigration status
  – Criminalization of failure to carry papers
  – Prohibition against solicitation of work in public
  – Authorization to arrest based on belief that individual is subject to “removal from the United States”

Utah’s reform initiative, March 2011

• Modest enforcement measures
• Special guest worker arrangements with the Mexican state of Nuevo Leon
• Fines with work permits and residency papers for undocumented, conditional on getting a “waiver” from the federal government

Seemingly the whole enchilada, but can a single state enact Comprehensive Immigration Policy Reform? Very doubtful...
Finally, bringing it home: Indiana’s SB 590, in the spirit of the Arizona initiative

- Provision against “sanctuary cities”
- Officers permitted to stop individuals based on reasonable suspicion of unlawful residency
  - But “witnesses” to crimes not to be queried
- English-only requirement for most public meetings and documents
- Consulate-issued documents insufficient
- Residency status checked for offenders taken into custody

- In spring, ACLU brings suit in federal district court. Judge Sarah Evans blocks two provisions in late-June:
  - Warrantless arrest based on immigration status violates U.S. Constitution’s due process, search and seizure provisions
  - Cannot bar use of consular identification card as a legal form of ID