



American Immigration Reform: A Fierce Debate

Aaron Erlich, Georgetown University

- Congress is badly split between those who favor a “comprehensive” approach to dealing with immigration reform, including legalization of the unauthorized population and a low-skilled temporary worker program, and those who favor “enforcement only” reform. Both camps, however, favor heavily reinforcing the southern border, which is seen as a post-9/11 security imperative.
- The stock (between 11.5 and 12 million) and flows (approximately 850,000 per year over the last five years) of unauthorized immigrants are at all-time highs. Business continues to demand more immigration, however, and 94 percent of unauthorized men work, indicating that they are being absorbed into the economy.
- Congress is facing increasing pressure from constituencies in the midwest and the southeast, which have only recently begun to see large-scale unauthorized immigration, to resolve the problem.
- While the Democrats present a united front on immigration reform, the Republican Party, for ideological and electoral reasons, is split between those who favor a comprehensive approach and those who favor an enforcement-only approach.
- The House passed an enforcement-only bill. The Senate’s current bill, which will be taken up again May 16, provides for graduated legalization provisions for many unauthorized immigrants, a robust temporary worker program, and a large increase in the number of employment-based permanent visas. It seems unlikely, however, that any legislation will be signed into law this year as a result of the great difference between the House and the Senate bills and the upcoming mid-term elections.

In the United States, debate over immigration reform goes to the heart of its identity as a nation. Indeed, unlike Germany, since its founding, the United States has conceived of itself as a nation of immigrants. Today in the United States, everyone, no matter their political persuasion, believes that the current American immigration system is badly broken and does not meet the needs of the 21st century.

On Capitol Hill, the debate is now split between those who support what is termed “comprehensive” immigration reform and those who support an “enforcement only” approach; everyone supports more border enforcement. Backers of comprehensive immigration reform argue that enforcement alone will not resolve the problem of unauthorized migration flows and will siphon money away from other important policy initiatives such as fighting terrorism. Therefore,

they argue that the United States needs to provide some form of legalization for the unauthorized population in the United States, remove immigration backlogs in the permanent visa system, and also increase the number of visas – both temporary and permanent – particularly for low-skilled workers, in order to alleviate the pressure on the US border. Those who support enforcement only argue that providing legalization would reward those who have broken the law and that the United States does not need more immigrant workers. Furthermore, they claim that the United States has never properly tried enforcement, because it has a virtually non-existent workplace enforcement regime and does not do enough to secure its borders.

Background

Congress has recently felt forced to act because it faces a plethora of new challenges from individual constituents and major lobbying organizations. Perhaps, most importantly for congressional representatives, the stock and flows of unauthorized immigrants are now at an all-time high. The unauthorized now comprise 30 percent of all foreign born in the United States (including naturalized citizens). Moreover, the estimated average annual flow of the unauthorized has increased from 486,000 per year between 1992 and 1997 to 850,000 per year between 2000 and 2005.¹

Economic pull factors are leading unauthorized immigrants to diversify their destinations. Many undocumented immigrants are now moving to locations in the midwest and southeast that have not seen substantial migration in over a hundred years. Some residents of these new destination states, conceiving of unauthorized immigrants as breaking the law, taking their jobs, and unwilling to integrate by learning English, loudly lobby their politicians.

Not only are unauthorized immigrants moving to new places, but border crossing patterns have also changed. As a result of increased US border control efforts around the traditional unauthorized crossing points like El Paso, Texas, and San Diego, California, unauthorized immigrants have started to cross in more remote areas of Arizona and New Mexico. These states were, until recently, unaccustomed to seeing such flows and do not like the lawlessness in their communities, the cost imposed by unauthorized immigrants

trampling their fields, the loss of life of migrants dying in the desert, or the added social welfare costs such as schooling and health care.

Lurking in the background of the unauthorized migration debate is the question of terrorism. The great majority of unauthorized immigrants come to the United States to work peacefully. However, the large number of people crossing the US border combined with the increased security concerns following 9/11 have raised enormous concerns about the porosity of the US borders. Many across the country worry that if unauthorized immigrants can easily cross America's borders, so can terrorists and transnational criminals.

Other new developments, only indirectly related to the unauthorized population, are also shaping the current debate. Many politicians in Congress have realized that strong and increasing demographic growth will make the Latino vote ever more important. As witnessed by the recent rallies, Latinos appear to be emerging as a well-organized force that politicians can no longer take for granted. Additionally, business has increased its lobbying pressure on Congress to allow for more low- and high-skilled immigration. For example, organizations such as the Essential Worker Immigration Coalition (EWIC) have stepped up pressure on Congress to raise the legal caps on immigration.

The Unauthorized Population

According to the best estimates, the total unauthorized population is between 11.5 and 12 million and has risen by 2.7 million since the 2000 US Census.² The unauthorized in the United States come from all over the globe, although Mexicans, who constitute approximately 56 percent, predominate. Particularly for the unauthorized Mexican population, illegal immigration to the United States is much less circular than it used to be, as the difficulty and expense required to cross the United States - Mexican border forces many immigrants to stay and bring their families with them instead of returning home periodically, as they traditionally did. Between 25 and 40 percent of unauthorized immigrants entered the country legally, usually with a valid visa, but remained after their visa had expired. The remaining unauthorized population entered the country illegally with no valid documents.³

Estimates show that the unauthorized population possess many characteristics that would make their removal socially, politically, and economically difficult. Sixty percent (6.7 million) of the population has been in the United States more than five years, while only 40 percent (4.4 million) has been here five years or less. According to current constitutional interpretation, US citizenship is granted at birth to everyone born on US territory (excluding diplomats but including tourists, temporary workers, and unauthorized immigrants). Therefore, 30 percent of families, whose head of household is an undocumented immigrant, have at least one child who is a US citizen. There are approximately 3.1 million children of unauthorized immigrants who are US citizens. Unauthorized migrants also contribute significantly to the economy. There are 9.3 million unauthorized adults in the United States, 58 percent of whom are male. There are 7.2 million unauthorized in the labor force. A much higher percent of unauthorized men between the ages of 18 and 64 work (94 percent) compared to US natives (83 percent); however, only 52 percent of unauthorized women work compared to 72 percent of native women.

Lobbying Forces on Immigration Reform

Labor and business are highly involved in immigration reform. While labor has traditionally favored Democrats, not all labor organizations agree with the mainstream democratic position on comprehensive immigration reform. Although most of old labor such as the AFL-CIO has come around to support the legalization of the unauthorized population, they are vociferously against any temporary worker programs, as they believe such programs undermine stable long-term positions with benefits and lead to the exploitation of workers.⁴ New labor unions, however, such as the Service Employees International Union (SEIU), with 1.8 million members, strongly support legalization and temporary worker programs and see immigration as a way to expand the unionized labor force. Unsurprisingly, business supports both legalization and a temporary worker program because they feel that they need immigrants' low-skilled and high-skilled labor to maintain global competitiveness and fill labor shortages.

Grassroots organizations cover the whole spectrum of the debate and continue to play an important role in influencing the congressional

debate. These organizations can be broadly characterized as supportive of or against comprehensive immigration reform. Almost all civil rights organizations support legalization and temporary worker programs and lobby to achieve these goals. Some of the more nationally known and longstanding of these organizations involved in immigration reform include the National Council of La Raza, the National Immigration Forum, and the Mexican American Legal Defense and Education Fund (MALDEF). A strange combination of those worried about American cultural decline, the salaries and benefits of low-skilled American workers, and the environmental effects of population growth lobby to remove the unauthorized population and to decrease immigration. Many of these groups are represented on Capitol Hill by Federation for American Immigration Reform (FAIR).

In addition to labor, business, and grassroots organizations, the Catholic Church has recently emerged as an important player in the immigration debate and has been influential in lobbying on Capitol Hill and in organizing rallies.⁵ Cardinal Roger Mahony told lay Catholics to refuse to obey H.R. 4437, the House's enforcement only bill, if it became law. The Catholic Church sees its support of immigration in general and unauthorized workers in particular as a key part of its vision for social justice. In addition to its universalist social justice mission, the Catholic Church is acutely aware that approximately 78 percent of unauthorized immigrants come from predominantly Catholic Latin American countries. Furthermore, Latin American Catholics hold more true to traditional Catholic beliefs and practices than US born Catholics and have substantially increased church attendance.

Electoral Politics⁶

Democrats present a relatively united front and have historically supported immigration and the civil rights of minority groups. They see recent immigrants as their natural future voters and want to protect themselves against Latino voters defecting to the Republican Party. As a result, Democrats want to provide comprehensive immigration reform.

Republicans, on the other hand, are badly split into three groups with regard to immigration. The first group, which is restrictionist, makes up the largest wing of Republican House members

(approximately 140 out of 231) and a substantial number of Republican senators (approximately 20 out of 55). This group lobbies for strict immigration enforcement at the workplace and the border and no legalization for those in the United States. This wing claims largest grassroots support in the Republican Party.

The second group, which is moderate, constitutes the largest number of Republican senators (approximately 30) and smaller percentage of Republican House members. They realize that it would be virtually impossible to deport the unauthorized population present in the United States and understand that legislation that is too restrictive could alienate key swing voters, particularly women and Latinos. They are willing to accept some form of earned legalization as a method to increase security by knowing who is in the United States and a temporary worker program. The third group, the smallest wing of the Republican Party, advocates traditional Republican free market values. They believe that both temporary worker programs and legalization are good, as they stimulate economic growth.

The White House plays an important roll in steering Republicans away from the restrictionist wing of the party, as President Bush advocates a combination of free market and moderate positions with regards to immigration. Indeed, Bush has called for immigration reform and matching willing workers with willing employers ever since he first ran for president. In addition, Bush's Chief Strategist, Karl Rove, and chairman of the Republican National Committee, Ken Mehlman, have seen the demographic increase of Latinos and like the moderates worry about damaging Republican support among Latino voters if they pass "enforcement only legislation."

Legislation

It appears that very different legislation will come out of the House and the Senate. Elections for the House occur every two years, and gerrymandering has created partisan districts. Furthermore, House rules make it easier for the majority to rule without consulting the minority; in other words, unlike the Senate – where the minority has many means to filibuster a bill and a super majority is often needed for contentious matters – the minority party in the House has few recourses to block a bill.⁷ As a result of these pressures, the House bill, which has already passed, is much more conservative than any

Senate bill, which may or may not be passed. If a Senate bill is not passed, the whole immigration reform process during this legislative period will be derailed.

The House has already passed a bill. This bill, H.R. 4437, is enforcement only and does not create a temporary worker program, expand the number of permanent visas or provide any form of legalization for unauthorized immigrants. Additionally the bill:

- Makes both being and assisting an unauthorized immigrant a crime.
- Authorizes the expenditure of \$2.2 billion to build a double layer border fence along the entire US border with Mexico.

The Senate was set to pass a comprehensive bill known as the Hagel-Martinez compromise (S. 2611) before it recessed on April 10. However, the bill was derailed as a partisan fight broke out over the number and type of amendments to the bill to be discussed. The Hagel-Martinez compromise, which will be taken up again on May 16, like the House bill, includes workplace enforcement and border provisions, although the border provisions are not nearly as extreme. Beside enforcement provisions it also currently includes:

1. **A graduated legalization program.** Those who have been in the United States for over five years will be put on a citizenship track, those who have been here between two and five years will be eligible for a temporary work permit, and those who have been here for less than two years are not eligible for any relief.
2. **A temporary worker program for low-skilled workers.** S. 2611 drastically increases the number of temporary visas for low-skilled workers to 325,000 annually. It appears that these workers will be allowed to apply for permanent residence and can be put on a citizenship track after four years; however, there is some confusion in the bill.
3. **An increase in permanent visas.** The Senate bill expands the number of economic permanent visas from 140,000 to 450,000 annually for the next ten years, of which 135,000 would be for low-skilled

immigrants. Spouses and children accompanying those with employer visas do not count against cap. Family permanent visas remain at 480,000 per year, however, spouses, parents, and minor children of US citizens do not count against the cap as they used to.

Outlook

If the Senate passes a bill, which many believe will occur, the Senate and House will go to a conference committee in order to try to work out the differences between their bills. However, many believe that the differences between the two bills will be too great for the legislation to emerge from the conference committee. It is possible that many in the House may be willing to soften their position, and President Bush appears likely to influence the House to pass a bill similar to the Senate's. However, the impending mid-term elections could encourage congressional Republicans and Democrats to stall on the legislation until after the mid-term elections in November. Congress has a very low approval rating currently and, despite knowing that immigration reform needs to occur, many congressional Republicans fear that passing a liberal bill such as the Senate's would hurt their chances at the polls during the mid-term elections. Democrats, on the other hand, may believe that the mid-term elections could result in a large electoral swing in their favor, and they could get a bill more to their liking during the next legislative session. Therefore, both parties may see no bill as more helpful to their re-election campaigns, especially if they can blame the other side for stalling the legislation. On the off chance a bill is passed out of committee – and this would require bipartisan cooperation – both the House and the Senate would need to vote on this bill. The bill would have to be both passed out of committee and voted on all before the legislative session ends; however, it is feasible for the legislation to be passed after the mid-term elections in November and before the end of the legislative session at the end of this year.

Washington, DC
May 16, 2006

¹ Jeffrey Passel and Robert Suro, "Rise, Peak, and Decline: Trends in United States Immigration 1992-2004," Pew Hispanic Center (September 27, 2005). Available from <http://pewhispanic.org/files/reports/53.pdf>.

² Unless otherwise noted, all statistics in this section are taken from Jeffrey Passel, "The Size and Characteristics of the Unauthorized Migrant Population in the United States Estimates Based on the March 2005 Current Population Survey," The Pew Hispanic Center (March 7, 2006). Available from <http://pewhispanic.org/files/reports/61.pdf>.

³ Jeffrey Passel, "Unauthorized Migrants: Numbers and Characteristics," Pew Hispanic Center (June 14, 2005). Available from <http://pewhispanic.org/files/reports/46.pdf>.

⁴ Julia Gelatt, "Bush Immigration Appointees, Immigration Judges Criticized," *Migration Information Source* (February 1, 2006). Available from <http://www.migrationinformation.org/USFocus/display.cfm?ID=376>.

⁵ Donald Kerwin, "Immigration Reform and the Catholic Church," *Migration Information Source* (May 1, 2006). Available from <http://www.migrationinformation.org/Feature/display.cfm?id=395>

⁶ This section draws heavily on material presented by Michael Hill, "The Politics in Immigration Law Reform," Speech given at Georgetown University Law Center, April 25, 2006.

⁷ Aaron Erlich, "Whatever Happened to Old-Fashioned Jimmy Stewart-Style Filibuster?" *The History News Network* (November 18, 2003). Available from <http://hnn.us/articles/1818.html>.