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COMPREHENSIVE IMMIGRATION REFORM: A PRIMER

America's immigration laws are some of the most complex and archaic provisions that can be found in the U.S. statutes. The Immigration and Nationality Act of 1952 (INA) rivals the tax code in the level of detail, confusion, and absurd consequences produced by years of layering on provisions without systematically reviewing their results. Since the 1960s, Congress has periodically overhauled the INA, but has tended to focus on one hot-button issue at a time, resulting in a patchwork of outdated laws that fail to reflect the realities of 21st century America. The necessity of comprehensive immigration reform stems from years of neglect and failure to respond to incompatible interactions between different parts of the system, resulting in breakdowns that have crippled our ability to regulate immigration adequately, protect our borders, reunite families, and foster economic opportunity.

What is Comprehensive Immigration Reform?

Comprehensive immigration reform is a systematic overhaul of the country's immigration laws that focuses on building checks and balances into our immigration framework. Although most closely associated with legislation first proposed by Senators Edward M. Kennedy and John McCain, and Congressmen Jeff Flake and Luis Gutierrez¹, numerous bipartisan proposals² have emerged from Congress in the last few years. While a centerpiece of such proposals is some form of legalization for the roughly 12 million immigrants in this country illegally, equally important to success is a combination of proposals that would fix existing problems and act prospectively to create a well-functioning national legal immigration system for the 21st century. This includes establishing a fair but realistic means for regulating future immigration needs, securing our borders and safety through efficient application of new enforcement strategies and technologies, ensuring that our system welcomes new immigrants, and ensuring that all immigration laws respect the principles of due process on which this country is based.

What are the key elements of Comprehensive Immigration Reform?

1. Solving the law enforcement and humanitarian dilemma posed by the roughly 12 million people living and working in the United States without legal status.

A vast majority³ of the American public recognizes that mass deportation of persons here illegally is virtually impossible. This is consistent with the opinion held by experts and analysts who work on immigration policy. While there have been different proposals over the years, the program that has the most support among analysts and the American public involves getting right with the law under the following components:

- **Registration:** Undocumented immigrants register with the government, undergoing background checks in order to qualify for the program. Those who do not qualify would go through regular removal procedures.

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- **Key Requirements:** Other components of earned legalization include learning English, if they haven't already; creating a record of paying taxes; possessing no criminal record, and paying fines and fees as decided by Congress.
- **Legal status:** If they met all of the requirements, registered individuals and their immediate family members would be allowed to apply for legal status and become legal permanent residents and eventually U.S. citizens.

Two additional, discrete earned legalization programs are also likely to be a part of any comprehensive package: The Agricultural Job Opportunities, Benefits, and Securities Act⁴ (AgJobs), a carefully negotiated proposal addressing the interests of agricultural workers and employers, and the Development, Relief, and Education for Alien Minors Act⁵ (DREAM Act), which provides legal status for students brought to the United States years ago as young children.

2. Ensuring that immigration enforcement enhances national security and community safety without undermining due process protections.

Most experts and analysts, including those in law enforcement, believe that legalization is one of the key elements to ensuring our country's safety because it would allow the federal government to focus on genuine threats posed by those seeking to do the country harm rather than individuals who lack status but have committed no other crimes.⁶

- **Smart Enforcement:** Because Congress has focused almost exclusively on border enforcement and related issues in the past ten years, DHS is already well-funded⁷ and well-positioned to carry out its enforcement mission; CIR needs to address the refinements that would allow DHS to do that mission in a way that is efficient but respects the rule of law. Enforcement in the 21st century will likely depend on a combination of strategic placement of personnel, the efficient use of new technologies to monitor entry and departure of visitors, and careful coordination with other federal law enforcement agencies that deal with issues such as drug smuggling and human trafficking.
- **Due Process Protections:** In the last few years, the problems of a deportation-driven enforcement system have become increasingly evident. Mass arrests in places like Postville, Iowa's Agriprocessors meat packing plant⁸ highlighted due process violations within the immigration system. Repeated deaths in immigration detention⁹ have also raised public ire. Numerous legislative proposals¹⁰ already exist to address some of these problems and are likely to be included in a comprehensive bill as well.

3. Ensuring that the pull of jobs does not lead to new illegal immigration.

One of the major criticisms of the Immigration Reform and Control Act (IRCA)¹¹, which legalized approximately four million undocumented immigrants in the late 1980s, was the failure to include provisions for dealing with future workforce needs. The authors believed that employer sanctions would deter future undocumented immigration, but they did not account for an increased need for immigrant workers. Because overall immigration numbers were not adjusted to meet demand (and have remained essentially stagnant since 1990), the growing economy, widely available jobs, and inefficient enforcement fueled illegal immigration. The neglect of this problem over the years has led to ever more restrictive legislation and proposals

to end illegal immigration by punishing those already here. Instead, comprehensive immigration reform must look prospectively at measures that will eliminate as much as possible the lure of coming illegally to the country. These measures include:

- **Assessing Need:** A realistic assessment of the number of jobs that will be created in the coming years which should be filled by immigrant labor when native born workers cannot fill the need. Such an assessment requires both a commitment to improving job opportunities and training for native-born workers and a focused discussion of current immigration caps and numerical limitations across all types of jobs. It requires an acknowledgement that existing employment based caps are too rigid and too low to adjust to a changing marketplace, a critical assessment of existing programs and creative solutions for improving or rethinking the way we allocate employment-based visas.
- **Employment Verification:** An efficient and accessible means of verifying employment authorization in order to support employers who want to follow the law, penalize those who would try to pay workers under the table (and thus operate at an unfair competitive advantage) and protect workers from unnecessary job loss based on poor databases or other errors. Electronic verification systems, such as the current E-verify system, can only be successful if done in the context of comprehensive immigration reform and if the system is improved to protect all workers and minimize errors.

4. Ensuring that immigration policy supports families and American values

While illegal immigration is frequently the focus of the immigration debate, the breakdown of the legal immigration system is equally destabilizing. Current backlogs in family-based immigration¹² lead to delays of up to twenty years for the legal migration of family members. Moreover, recent attempts to undermine family-based immigration have ignored the significant role family support plays in the success of immigrants, and thus of the American dream. The long delays and outdated procedures have generated a number of policy proposals that could form the basis for reforming family based immigration.¹³

5. Integration and naturalization of immigrants

Another key element of comprehensive reform is providing sufficient structures for immigrant integration and naturalization. President Obama's budget request for \$10 million¹⁴ to create an Office of Immigrant Integration signals strong support for building more mechanisms to ensure that legal immigrants succeed and contribute to America's prosperity through English and civics training, preparation for naturalization, and other programs to integrate fully as U.S. citizens. A number of popular bi-partisan proposals¹⁵ on this issue already exist and some provisions are likely to find their way into a CIR package

Public support for Comprehensive Immigration Reform is high.

Polls¹⁶ consistently show that the American public recognizes that a comprehensive overhaul of the immigration system is the only legitimate solution. When people understand what comprehensive reform means, they also understand that it is the only viable solution being offered to address legitimately our complex and compelling need for an immigration system that serves American interests in the 21st century.

Endnotes

¹ U.S. Senate, [Secure America and Orderly Immigration Act \(McCain-Kennedy Bill\)](#), 109th Cong., 1st sess., May 2005, S. 1033 (Also see [H.R. 2330](#) [109th]).

² U.S. Senate, [Safe, Orderly, Legal Visas and Enforcement Act of 2004](#), 108th Cong., 2nd sess., May 2004, S. 2381 (Also see [S. 1639](#) [110th], [S.1348](#) [110th], [S. 2454](#) [109th], [H.R. 4437](#) [109th], [S.2611](#) [109th], [S. 2612](#) [109th]).

³ Jennifer Agiesta and Alec MacGillis, “[Poll: Rising U.S. Support for Social Issues, Such as Gay Marriage](#),” *Washington Post*, April 30, 2009. See also, America’s Voice, [Polls Show American’s Support Comprehensive Immigration Reform](#) (Washington DC: May 2009).

⁴ U.S. Senate, [To improve agricultural job opportunities, benefits, and security for aliens in the United States, and for other purposes](#), (AgJobs) 111th Cong., 1st sess., May 2009, S. 1038 (Also see [H.R. 2414](#) [111th]).

⁵ U.S. House of Representatives, [The Development, Relief, and Education for Alien Minors Act of 2009](#), 111th Cong., 1st sess., March 2009, H. R. 1751 (Also see [S. 729](#) [111th]).

⁶ Immigration Policy Center, [Debunking the Myth of “Sanctuary Cities”: Community Policing Policies Protect American Communities](#) (Washington, DC: American Immigration Law Foundation, March 2009). Also see the Major Cities Chiefs Association’s [Recommendations for Enforcement of Immigration Laws By Local Police Agencies](#) (Columbia, MD: 2006).

⁷ Immigration Policy Center, [Money for Nothing: Immigration Enforcement without Immigration Reform Doesn’t Work](#) (Washington, DC: American Immigration Law Foundation, May 2008). Also see Rob Margetta, [Seeds for Immigration Policy Debate Could Be Planted in Spending Markup](#), *CQPolitics*, June 5, 2009.

⁸ National Immigration Justice Center, [Immigration Enforcement and Human Rights: One Year After the Postville ICE Raid](#) (Chicago, IL: Spring 2009). Also see Immigration Policy Center, [Postcards from Postville, Iowa](#) (Washington, DC: American Immigration Law Foundation, June 2008).

⁹ Nina Bernstein, “[Few Details on Immigrants Who Died in Custody](#),” *New York Times*, May 5, 2008.

¹⁰ U.S. Senate, [Detainee Basic Medical Care Act of 2008](#), 110th Cong. 2nd sess., May 2008, S. 3005 (Also see [H.R. 7255](#) [110th], [H.R. 5950](#) [110th]).

¹¹ Immigration Policy Center, [Learning From IRCA: Lessons for Comprehensive Immigration Reform](#) (Washington, DC: American Immigration Law Foundation, May 2006).

¹² Asian American Justice Center, [Asian American Organizations Applaud Introduction of Reuniting Families Act; Call for Congress to Fix the Broken Legal Immigration System](#) (Washington, DC: September 2008). Also see [Reuniting Families Act Background](#) (Washington, DC: Asian American Justice Center, 2009).

¹³ U.S. House of Representatives, [A Bill to Amend the Immigration and Nationality Act to promote family unity, and for other purposes](#), 111th Cong., 1st sess., June 2009, H. R. 2709 (Also see [S. 1085](#) [111th], [S. 1247](#) [111th]). Also see [Sen. Menendez and Rep. Honda Work to Protect Family Reunification in the Immigration in the Unification Process](#) (Washington, DC: Office of New Jersey Senator Robert Menendez, September 2008).

¹⁴ U.S. Department of Homeland Security, [Testimony of Secretary Napolitano before the House Homeland Security Committee, FY 2010 Budget Request](#), May 2009.

¹⁵ U.S. Senate, [A Bill to Assist Aliens who have been lawfully admitted in becoming citizens of the United States, and for other purposes](#), 110th Cong., 1st sess., March 2007, S.795. (Also see [H.R. 1379](#) [110th]). Also see U.S. Senate, [A Bill to provide for comprehensive immigration reform and for other purposes](#), 109th Cong., 2nd sess., April 2006, S. 2611 (Also see [H.R. 4437](#) [109th], [S. 2454](#) [109th], [S. 2612](#) [109th]).

¹⁶ *ABC News/Washington Post* poll, “[Changing Views on Social Issues: Allemande Left. Allemande Right](#)” (Washington, DC: April 30, 2009). Also see America’s Voice, [Recent Polling on Immigration Reform](#) (Washington DC: May 2009).