

Policy Outlook for Immigration Reform

There is broad agreement that the nation needs to overhaul its immigration policies, but how to change national policy is once again shaping up as a major debate. After recent failed attempts in Congress to reform the nation's immigration laws, policy options have been sharpened over the last several years and a new administration and Congress now have a fresh opportunity to enact reforms.



Because America thinks of itself as a nation of immigrants, any discussion of immigration policy is bound to raise deep questions of national identity. The wide-reaching transformations we are now enduring cast these questions into high relief. How can we as a nation continue to admit large numbers of diverse immigrants and over time, live up to our motto of E Pluribus Unum ‘out of many, one?’

This brief discusses federal policy domains and options currently “on the table” — legalization, border security, worksite verification, the management of admissions and immigrant integration. It identifies how existing laws might change so that our immigration system functions more effectively and more fairly.

Background

Although the United States has been a “nation of immigrants” from the start, the flow of immigrants has been anything but smooth and steady. Instead, we have experienced waves of immigration in response to economic and legal changes, and we are in the midst of one today. The current wave rivals an earlier period, which lasted from the 1880s through World War I. During the first decade of the 20th century, 8.2 million immigrants were legally admitted, a record that stood until the last decade of that century, when 9.8 million legally entered. The running total for the current decade (through 2008) has already reached 9.2 million. Similarly, at the World War I peak, about 15 percent of the U.S. population was foreign-born. More recently, the share has risen from a low of less than 5 percent in 1970 to nearly 13

percent today. If recent trends continue, the percentage of foreign-born residents of the United States is likely to hit a record before the end of the next decade.

One difference between past and current trends is the large number of immigrants who are living in the United States without legal status, including those who arrived with legal visas and overstayed and those who entered surreptitiously. These estimated 12 million unauthorized immigrants have come to represent the failure of the U.S. immigration system either to achieve adequate levels of enforcement and security or to strike a sustainable balance between the nation's economic needs with the core interests of its existing workforce. What to do about the unauthorized population is the most contentious issue of the current debate.

Given the current economic context—a period of exceptional economic growth followed by a severe recession of uncertain duration—the nation's admissions system and management of future immigration flows have come to dominate the debate. At the same time, border security, worksite enforcement, and to a lesser extent, immigrant integration, are also important elements of contestation.

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How We Should Respond: Specific Issues

Crafting a new approach to immigration will be complex and contentious. The task becomes easier to understand if the problem is divided into the specific issues that new immigration legislation would have to address.

Overall Level

Today, the United States admits about 1 million legal permanent residents (LPRs) each year. In addition, over the past two decades, roughly 500,000 individuals annually have taken up residence without legal authorization. Granted, there is evidence that immigration is slowing overall, particularly among the unauthorized but also among legal immigrants who are weighing their options in a global economy decidedly less expansive than in recent years.

Broadly speaking, there are two possible responses—adjusting the law to current realities, or deploying the law in an effort to change the facts on the ground. A task force sponsored by the Migration Policy Institute (MPI) offers an example of the former approach. Based on the assumption that current immigration flows reflect the needs of the American economy, it recommends a figure of 1.5 million immigrants per year as a “transparent and realistic benchmark from which to manage immigration as it is actually occurring.” By contrast, the Commission on Immigration Reform headed by Barbara Jordan, which issued its report in the late 1990s,

recommended a cut of nearly one-quarter in the annual LPR quota. There are many other possibilities along the continuum from steep increases to deep cuts; each will reflect a distinctive balance among competing considerations. One thing is clear: the deeper the cuts in current levels of aggregate immigration, the greater the need for effective enforcement mechanisms. To the extent that enforcement turns out not to be technically feasible, economically affordable, or politically sustainable, the gap between law and reality will persist—regardless of what the law says.

Family Reunification

Most Americans have at most a vague idea of the role family reunification plays in U.S. immigration policy. In fact, it is central. Of the roughly 1 million individuals admitted to LPR status in 2007, nearly 700,000 reflected family relationships. About half a million were spouses, minor children, and parents of U.S. citizens—nuclear family members. But almost 200,000 were outside that category—adult children, siblings, spouses and children of alien residents.

Attitudes toward this family-centered policy vary considerably. Groups—such as the MPI Task Force—that are broadly sympathetic to expansive immigration policies tend to favor the status quo regarding family reunification, while others believe that this system reflects distorted priorities. For example, the Jordan Commission called for a reduction in the overall number of family-based admissions and recommended abolishing admission criteria based on non-nuclear family ties. Here again, one could imagine intermediate positions—for example, a proposal that distinguishes between the treatment of adult sons and daughters on the one hand from siblings on the other.

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Employment and Skills

At present, only 15 percent of admissions to LPR status reflect workforce-based criteria, a share that many reformers would like to increase. Disagreements arise over specifics, however, particularly regarding temporary versus permanent admissions and higher-skilled versus lower-skilled admissions. Some people argue that the current flow of unauthorized immigrants reflects a demand for unskilled labor that our current workforce cannot meet and that the law should change to reflect economic reality. To this end, the MPI Task Force proposes the legal admission of 390,000 unskilled immigrants each year. After working for three years, they would have the option of remaining as legal permanent residents. Others deny the popular assertion that “unskilled immigrants do the jobs that Americans won’t,” contending instead that employers just don’t want to pay a fair wage to American workers and prefer cheaper, more controllable foreign workers. To force employers to hire lower-skilled Americans—and to invest in training and capital equipment—they would shut

off the flow of unskilled labor from abroad by eliminating it as a legal category and by beefing up enforcement.

By contrast, there may be more agreement on the desirability of increasing the number of skilled workers admitted on a permanent basis. Some employers want to go farther by increasing the number of such workers admitted temporarily, claiming that they simply can't find enough trained Americans in fields such as technology, engineering, and finance. Unemployed Americans in these fields retort that employers have plenty of competent native workers but don't want to pay prevailing wages. (The underlying factual dispute is surprisingly hard to resolve.)

Some argue that there is a fundamental misalignment between our laws and the sources of competitiveness in 21st century economies. At present we admit hundreds of thousands of foreign students each year and then require them to leave when they've finished their degrees. In effect, we give them access to our world-class system of higher education but force them to use their new skills for the advantage of foreign industries and governments. Why not capture more of the value-added for ourselves? As some have put it, why not staple green cards to the diplomas of foreign graduates? Opponents of this approach argue that if large numbers of foreign students were to remain in the United States, the wages and opportunities of highly trained U.S. workers would be diminished. (Again, the empirical dispute is hard to resolve.)

Responsiveness to Economic Change

There is a growing consensus that our immigration laws are too rigid to respond to changing economic circumstances. A number of different groups have proposed new mechanisms or institutions for increasing the flexibility of our policies. For example, the Migration Policy Institute has proposed the creation of an independent federal agency called the Standing Commission on Immigration and Labor Markets, which would make recommendations to Congress every two years for adjusting immigration levels, based on labor market needs, patterns of unemployment, and shifting economic and demographic trends. Likewise, in a framework for comprehensive reform, the Economic Policy Institute proposes the Foreign Worker Adjustment Commission, an independent agency to monitor labor shortages and make recommendations to Congress regarding employment-based immigration levels. Opponents of these approaches contend that too much authority would be shifted away from the people's representatives to unelected experts.

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Enforcement

There is widespread agreement that we have failed to enforce current immigration laws and that this failure has undermined public confidence in the system. Large numbers of individuals enter the United States without proper authorization and get hired without valid and accurate documentation. And large numbers of individuals legally enter the United States on a temporary basis—for travel, study, or work—and then fail to leave when their visas expire, choosing instead to melt into the population and live in the shadows. Furthermore, national security issues in a post-September 11 environment have elevated fears of terrorism by non-state actors.

Most will agree, in principle, that we need better enforcement—some combination of improved tracking of temporary visa-holders, upgraded border security, and expanded responsibility of employers for verifying the legal status of their workers. But disagreement arises over the balance to be struck among these objectives and the means of achieving them. Some emphasize border security—either more agents, high-tech monitoring equipment, a more effective fence, or some combination. Others believe that our border cannot be secured at a cost—fiscal, human, diplomatic—that we would be willing to pay and urge a new focus on workplace enforcement. Employers contend, justifiably, that they cannot be held responsible for their hiring practices unless there is a system of identification that is both tamper-proof and resistant to identity fraud.

Many argue that E-Verify—a federal, largely voluntary system by which employers check the work authorization of potential new hires—should be expanded to achieve nationwide participation. The system incorporates data from the Social Security Administration and the Department of Homeland Security but is still far from foolproof. (It allows a number of false positives and false negatives, and it does not adequately protect against identity fraud.) To address this issue, a proposal to beef up social security cards by including biometric data is on the table.

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Coping with Past Policy Failures

The issues discussed thus far point forward to a better future. But policy makers must also address the legacy of past policy failures—specifically, the unauthorized presence of almost 12 million people within our borders. This fact has generated some of the most heated rhetoric and extreme proposals in the entire debate. Some immigrant advocates argue that because the law is unreasonable and largely unenforceable, and because government, business and many individual citizens are complicit in the current situation, it is both necessary and appropriate to regularize and legalize the status of millions who now live in the shadow of the law but lie

outside its protection. Some call generically for an earned path to permanent status, while others insist that the possibility of citizenship must exist at the end of that path. Most agree on conditions—fines, fees, security checks, English acquisition, and a place at the back of the line among others waiting for legal admittance—reflecting the fact that however long individuals may have been in the United States and however productive they may have been, they nonetheless came without authorization and cannot be treated equally with those who obeyed the law and waited their turn.

Opponents of this course, which they often characterize as “amnesty,” are numerous and fervent. Appealing to widespread sentiments about the rule of law, they reject the idea that individuals should be (as they see it) rewarded for breaking the law. The most extreme response is to say that we should “round them up and send them home.” More measured is the suggestion that we should begin with stepped-up workplace enforcement, which should reduce employment opportunities for unauthorized residents and increase their incentive to return home. (The current economic downturn, which has hit immigrant-intensive sectors such as construction with special severity, might well accelerate the exodus.)

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Even with fewer opportunities and better enforcement, however, many unauthorized residents would remain. One strategy advocated by some moderate restrictionists would allow those who have been in the United States for a long time—say, five years or more—to remain in some legal status without the possibility of attaining citizenship, while those who have been here less than five years would be forced to leave.

Amidst this heated debate, there is increasing agreement that if there is to be a legalization program, it must occur in tandem with a worksite enforcement effort of a scope and effectiveness that we have not yet achieved. An internal verification system must be established for employers to accurately and reliably determine the eligibility of new workers.

One thing is clear: past enforcement failures have created such pervasive public mistrust that government now bears a heavy burden of proof, whatever new course it advocates. Without a demonstrable commitment to tough enforcement measures and the rule of law, reform efforts are bound to founder and fail. So far, the rhetoric and actions of the Obama administration are in line with such an “enforcement first” approach. Those include a continuation of raids at workplaces that employ unauthorized immigrants, albeit with mechanisms to protect human rights, as well as the tough speeches and actions of new Homeland Security Secretary Janet

Napolitano. In demonstrating commitment to enforcement and security issues, these measures may open the way for a reworking of other elements of reform that could gain broader support across partisan and ideological lines.

Immigrant Integration

The United States government has traditionally taken a laissez faire approach to immigrant integration, which is vital for better functioning institutions and communities at the local level. The process of moving immigrants into greater civic participation, social incorporation, and economic mobility has largely been left to institutions such as schools, hospitals, places of worship, libraries, community-based organizations, and neighborhoods—and to immigrants themselves. While it is true that “all integration is local,” many now believe that the federal government can and should take a role in assisting localities with the sometimes unexpected task of incorporating new streams of residents from abroad by providing funding to states and localities to offset the cost of integrating newcomers.

One strategy—among the least contentious, but nonetheless difficult—is to support English language instruction for immigrants. The vast majority of immigrants want to learn English, and it is key to other aspects of their integration into American society. But supply of classes has not kept up with the demand, and places with large influxes of immigrants need help.

Although the incorporation of immigrants has been a neglected policy issue, it would serve communities better, particularly those that are going through rapid transitions, to include it as part of a larger set of reforms. Agreement on this proposition has been expanding of late. It is no accident that virtually every recent proposal for reform of our policies calls for intensified efforts to teach new arrivals, not only our language and social norms, but also our history, institutions, and principles. If this commitment induces current citizens to take these matters more seriously as well, the current debate will make our nation stronger and more united. Amidst the pervasive heat and occasional ugliness of the debate, there are grounds for hope.

Author



William Galston is the Ezra K. Zilkha Chair in Governance Studies and senior fellow at the Brookings Institution.

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Reforming immigration policy has been a subject of intense debate and promises to be so again in this new political climate. This series presents the work of experts from a variety of fields at Brookings and is designed to inform the public debate over immigration policy. Our goal is to stimulate new thinking on this important area and to present new information that sheds light on major immigration concerns and trends.

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The Brookings Institution
1775 Massachusetts Ave., NW
Washington, DC 20036
202.797.6000
www.brookings.edu