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Immigration Reform: A Comprehensive vs. Piecemeal Approach

By Tony Payan, Ph.D.

Overview

The 2012 elections sent a clear message from the American public in general and the nation's Hispanic community in particular: the time is now for immigration reform. However, it is not clear whether the political will or the momentum needed to carry out comprehensive reforms exist. We argue that neither is present, but progress can be made in any case. The key is the approach employed to achieve reforms. We advocate a system whereby targeted strategies are implemented for a range of immigrant populations with irregular legal status. We also propose separate measures to address the U.S. visa system, with the goal of responding more effectively to an eventual economic recovery and future labor demands. While the conditions for comprehensive immigration measures are not present, it is possible to achieve reforms through a piecemeal approach.

- **Recommendation 1:** Reintroduce the DREAM Act.
- **Recommendation 2:** Allow adult children of undocumented immigrants to petition for the citizenship of their parents and siblings.
- **Recommendation 3:** Modernize the pardon process to reunify families.
- **Recommendation 4:** Review the visa system to expand visa types.
- **Recommendation 5:** Reconceive the E-verify system within the larger visa system.
- **Recommendation 6:** Devote greater resources to immigrant processing.

Growth of Undocumented Residents in the United States since 1986

The total unauthorized resident population of the United States has steadily increased since 1986, when the U.S. Congress passed the Immigration Reform and Control Act. The Department of Homeland Security (DHS) estimated the 2009 unauthorized resident population at about 11 million. The number of unauthorized residents very likely peaked in 2007 at 11.8 million, according to the same estimates, and has since been decreasing, though seems to have held steady at just below 11 million.¹ Nearly half of all unauthorized immigrants arrived in the U.S. with temporary nonimmigrant visas, which they overstayed; the other half crossed between ports of entry. Using DHS numbers, the unauthorized population represents about 3.5 percent of the total U.S. population. The cold numbers, however, do not reflect the complex issues behind the immigration predicament that confronts American society and Congress today.

Millions of unauthorized residents have now formed families and laid deep roots in their social, economic, and cultural environments. Some came to the United States as young children or infants and have known no other country. The overwhelming majority of unauthorized migrants are otherwise law-abiding, taxpaying, model residents, and few engage in criminal activities.

Current U.S. policy on unauthorized migrants is largely focused on law enforcement, with particular emphasis on immigration deterrence at the border and unrestricted deportation for those already in the country. This policy results in the separation of families, an increase in the detained and imprisoned population, and the criminalization of millions of individuals. It is counterproductive in that it does not consider the long- and medium-term labor needs of the U.S. The growing tragedy of family separations by deportation is one of the most shameful byproducts of current policy. The frustration of many employers who face stiff penalties for hiring undocumented workers in response to the unwillingness of American citizens to take up undesirable jobs is growing.

This paper aims to aid policymakers forge a stronger and more sustainable immigration system by analyzing the changing landscape of immigration in the United States and what it means for immigration reform.

The Push-and-Pull Forces of Immigration

Seen through the prism of a recovering U.S. economy, immigration reforms become even more crucial. An economic recovery means more jobs, which will attract workers from Mexico and Central America. However, it is important to realize that the great wave of Mexican migration may be over and the number of Mexicans moving to the United States will slow. Several factors account for this. First, Mexico's birth rate is currently at 2.27 children per woman and dropping fast. It may soon reach replacement level and within two decades Mexico may find itself in need of migrant workers for its own economy, which continued to hum along as the United States experienced a recession. At the same time, the U.S. birth rate is 2.5, barely above replacement level. Second, Mexico's economy is growing at approximately 5 percent per year and, if the Peña administration manages the important reforms—labor, energy, education, justice, and anti-corruption—being negotiated, its rate of growth may go even higher, absorbing most of the new workers entering the labor market in Mexico. Third, the Mexican middle class is growing and most will not likely seek to move without authorization but may seek legal migration alternatives instead. The Mexican middle and upper classes, however, will not seek low-skilled and service jobs. In fact, Mexico's middle class may join the millions of tourists and shoppers who already travel to U.S. cities seeking leisure activities.

This does not mean that the push forces of migration will soon be exhausted. Many Mexicans live below the poverty line and some will still be attracted to higher wages in the United States. But the more likely source of unauthorized workers will be Central America, particularly Guatemala, El Salvador, and Honduras. Whereas Mexican migration

is net zero, Central American migration has continued, even though Central Americans not only face the difficulties of crossing the U.S.-Mexico border, but also the exhausting, perilous and often inhumane journey through Mexican territory.

The respite in unauthorized migration from Mexico presents a unique opportunity to reform the immigration system in a way that will attract the workers the U.S. economy will need. The question is how to achieve reform and prepare today for periods of prosperity tomorrow.

A Changing Landscape: Opportunities for Reform

Immigration flows down

The shifting conditions that could represent an opportunity for immigration reform are linked to the dramatic decrease in cross-border unauthorized flows. There are several reasons why the flow of undocumented migrants has decreased in the last five years. The first is the tougher measures to contain the flow of unauthorized migrants. During the 2010-11 fiscal year, the number of migrants detained at the border stood at 327,577, well below the nearly 1.6 million in 2000. This means that the U.S. government has much better control on border flows, Congress can feel reassured that much has been done in regard to the border, and that it may be time to devise ways to allow and control migrant flows in a legal and orderly way.

The border is secure (although we don't know why)

One of the greatest myths about immigration is the idea that the U.S.-Mexico border is an insecure place. The facts belie this myth. Statistics show that the border counties and cities rank consistently among the safest in the nation. For example, the murder rate is well below the national average. There is also no evidence of a serious spillover of violence from Mexico, even at the height of violence in cities like Tijuana, Ciudad Juárez, and Nuevo Laredo. Much of the violent crime in border counties and cities is more closely related to the poverty conditions of the border than the violence in Mexico or the illegal flow of drugs across the border.

A change in public opinion on immigration

American public opinion overall is changing in favor of immigration reform. Sixty percent of Americans today, according to a Chicago Council on Global Affairs survey, believe that the presence of unauthorized migrants in the country is not a critical threat to the United States and may now favor a path to legalization for unauthorized workers already present in the country. Perceptions on immigration as a national threat have declined by 32 percentage points, indicating that the public's mood may be shifting in favor of changes that include regularizing the status of unauthorized migrants as well as a more flexible immigration system.

The vulnerability of migrants at home, in transit, and abroad

Central Americans have become one of the most vulnerable immigrant groups. Not only do they now represent the largest group of migrants to the United States but they

also have to traverse through Mexico, facing possible human rights abuses. Both the Mexican and the American governments now recognize that this situation is inhumane and civil society organizations are lobbying to ensure that these migrants do not suffer these abuses. There is also an implicit recognition that the U.S. economy will need these workers and that ways must be found to allow for an orderly flow of Central American migrants to the United States and, eventually, Mexico. An easier pathway for these migrants would end many of the abuses they endure on their journey and reduce the ability of organized crime to extract resources from them. Thus, the awareness of the human rights abuses that many migrants suffer constitutes an additional argument to push for an immigration system that restores a legal, circular migration in which workers go to work and return home when they are ready to do so. Such a system weakens the power of organized crime to victimize unauthorized migrants.

Costs of enforcement and potential savings

Heightened awareness of the federal budget deficit has brought renewed attention to the costs of immigration law enforcement. Immigration opponents often point to the costs of keeping unauthorized migrants in the United States, but they seldom refer to the costs of keeping immigrants out. According to a report from the United States Sentencing Commission, immigration cases now make up 34.9 percent of all cases in federal court, well beyond the 29.1 percent of drug-related cases. This uses billions of dollars of resources and valuable time from federal agencies, prosecutors, and judges. The amount is in addition to the billions of dollars the federal government spends in various federal agencies—including the 21,000-member Customs and Immigration Enforcement (ICE) and the 22,000-member Border Patrol (BP). Hundreds of millions more are invested in operations, investigations, new technology, physical barriers, and detention facilities. The FY2012 budget provided resources approaching \$20 billion for just these two agencies, while the number of detained unauthorized migrants at the border has dropped to record low levels. In addition, unauthorized migrants caught a second or third time are now being sentenced to prison terms of several years, further straining public budgets, as each bed in prison costs much more than simple deportation.²

Nonprofit organizations are beginning to see ways in which substantial savings could be made by reforming the immigration system and reducing the enforcement apparatus. This approach to immigration reform opens an opportunity to sway budget hawks to support such measures.

Comprehensive Immigration Reform vs. A Piecemeal Approach

It is clear there are important changes in the facts that surround the debate on immigration. The question is not whether it is time or not for immigration reform, but what is the best strategy to carry it out. Should the administration work toward comprehensive immigration reform or take a piecemeal approach?

In spite of lower migrant flows, changing public opinion, rising Latino political power, and public awareness of the personal tragedies of migrants and their families, the conditions for a grand bargain, better known as Comprehensive Immigration Reform (CIR), do not exist. Though there is no consensus on how to fix the system, all sides of the issue agree that the immigration system is in need of deep reforms. This suggests that resolving the immigration crisis will require a piecemeal approach. Targeted solutions for specific parts of the problem are more likely to lead to productive congressional debates on the immigration system than an attempt to resolve multiple issues in an overarching comprehensive reform measure.

A piecemeal approach will allow Congress to address different issues in the immigration system and ease pressure on the overall crisis. It will also allow vulnerable members of Congress to take cover from constituents who may oppose comprehensive immigration reform. On the downside, a piecemeal approach may result in the resolution of certain complicated aspects of the immigration system but eventually leave others issues unresolved.

This author recommends that comprehensive immigration reform not be attempted again. Instead, the immigration issue should be resolved in a series of acts that allow Congress to debate specific populations, resolve specific problems, and then move on to modify the immigration system to respond to the needs of the U.S. economy in the future.

The Facets of Reform: Policy Recommendations

Recommendation 1: Reintroduce the DREAM Act

On June 15, 2012, President Obama announced the Deferred Action for Childhood Arrivals (DACA) program, which went into effect on August 15, 2012. The measure is largely seen as the administration's response to Congress' inability to pass the DREAM Act, which was designed to regularize the situation of an estimated 1.6 million young persons brought to the United States without proper documentation by their parents. DACA, however, is not a substitute for the DREAM Act. A version of the DREAM Act must be reintroduced. The DREAM Act must grant full legal permanent resident (LPR) status to those who qualify, and then deport only those who incur serious violations of the law. If the DREAM Act is passed, the DACA numbers suggest that the overall unauthorized population would be reduced by about 12 to 14 percent, and these young people who know no other home than the United States would be fully integrated into the American mainstream society, to which they are very likely well-adjusted.

Recommendation 2: Allow adult children of undocumented migrants to petition for the citizenship of their parents and siblings

During the first half of 2012, some 45,000 parents of American children were removed from the United States, leaving their U.S.-citizen children in the care of a single parent, or under the custody of Immigration and Customs Enforcement and eventually in foster care. The U.S. immigration system is primarily predicated on family reunification. This

same principle can be applied to resolve the legal situation of several million unauthorized migrants. This author advocates allowing U.S. LPRs and citizen children of unauthorized migrants to petition for their parents before the Bureau of Citizenship and Immigration Services (BCIS) from within the United States.

Recommendation 3: Modernize the pardon process to reunify families

The unauthorized population is always in danger of being removed from the United States. Quiet tragedies are repeated every day, as parents are handcuffed and whisked away to deportation proceedings by ICE, often handing over their children to a social worker. Deported persons are deprived of all rights to return to the United States. After the September 11 attacks, the penalties for deportees and removed aliens were tightened even further. Criminal deportees, for example, are barred from entering the United States for life. Noncriminal deportees are barred from entering the United States for 10 to 20 years. Unfortunately, the system also punishes their families, who are left without their loved ones. Noncriminal deportees, however, can return to the United States after they have stayed outside the United States for the time of the penalty and not attempted to cross without documents again; but they must apply under an “admission after deportation/removal” process. This process for admission should privilege family reunification. Noncriminal deportees could be allowed to apply to return to the United States, if the basis for their return is family reunification and they have stayed out of trouble with the law. This process would involve a clear demonstration of family reunification, appropriate fines and penalties, and processing fees. Such returns have been granted in the past for humanitarian reasons. It is time to have a clearer, more flexible administrative process for family reunification after deportation.

Recommendation 4: Review the visa system to expand visa types

In general, there is very little room in the current U.S. visa system for the types of workers that make up the majority of the unauthorized working population—i.e., workers who tend to occupy jobs in the construction, landscaping, and service sectors.³ Congress should create a new type of visa for workers who can fill these types of jobs or, alternatively, a visa that invites them as guest workers during peak economic times.

The border has a highly integrated labor market that has not been recognized in the U.S. visa system. The border labor market includes day laborers, maids, day care workers, and others who cross the border with B1/B2 visas to work at very low cost to U.S. citizens and residents. The presence of these workers should be acknowledged and visas for this class of workers should be created. These visas do not have to be permanent immigrant visas, but rather, be work permits as petitioned by border employers and according to certain renewal guidelines that pay close attention to the needs of border workers.

TN visas, for NAFTA professionals, should be expanded to include the integration of North American workers. Part of the reason Canadians and Mexicans do not apply for TN visas is because they are for skilled professionals. TN visas should be extended to include service workers either on a permanent migration path or in a temporary guest worker

program. This visa could be modified to allow the unauthorized population to find a path to employment in the sectors that most require them, with eventual settlement in the United States. Employers in certain sectors (such as tourism, construction, food services) who do not have a way to petition for their employees should be allowed to do so on a permanent or a temporary basis—much like industries that require highly skilled labor are allowed to petition for the kind of workers they need. This fundamental change to the visa system would recognize that North America requires a new framework for labor mobility in the face of declining birth rates throughout the continent. This would have an additional effect on criminal organizations that smuggle humans across the border. It would also prevent many deaths in Southwest deserts and restore not only a path to work, but also human dignity to the millions of workers for whom the only route is illegal.

Recommendation 5: Reconceive the E-Verify system within the larger visa system

Since the immigration reforms of 1986, the U.S. government has slowly shifted part of the burden of immigration enforcement toward employers. At one time, employment eligibility was established by requiring every employee to complete an I-9 form certifying his or her eligibility. In case of an audit by immigration authorities, the employer would be fined for every unauthorized worker who filled out an I-9 form. Later, a computerized database was put into place that presumably corroborated an applicant's employment eligibility. This system, known as E-Verify, was introduced in 1997. E-Verify, however, has proven costly and inaccurate. Common errors include certifying the employment eligibility of workers who are not in fact authorized and erroneously rejecting U.S. citizens and permanent residents who are authorized to work. The E-Verify system has not forced any workers to leave the country and has instead driven many employers and workers underground into a kind of informal economy. E-Verify is also costly, as employers have to spend time processing workers and then attempting to correct the system's errors. The Government Accountability Office has called the system "minimally credible."

A more flexible visa system, indexed to U.S. economic performance, is more likely to be effective while saving the federal government billions of dollars. E-Verify should be discarded in favor of a new visa system that better responds to the future labor needs of the United States.

Recommendation 6: Greater resources for immigrant processing

The current approach to solving the immigration crisis is lopsided. It relies primarily on law enforcement, without serious consideration of the future of the U.S. economy or the types of workers that will be required in a recovering economy. The United States should index the number and type of worker visas to U.S. economic performance and allocate resources to resolve a visa processing backlog that has become a permanent fixture of the U.S. immigration system.

There are two ways to recover the resources required to speed migrant processing. First, each visa should reflect the cost of its administrative processing. This, however, can be

taxing on many migrant families; therefore, families should be allowed to pay these fees, which can amount to thousands of dollars, in installments over a reasonable period of time. Second, the resources allocated to local police departments through 287(g) should be channeled to the Bureau of Citizenship and Immigration Services for the purpose of expediting visa processing. This would end the deputizing of local police forces as immigration enforcement officers and restore much of the trust lost between local migrant communities and the agencies that are supposed to protect them.

Conclusion

The past few years have seen important shifts in the immigration landscape. Immigration flows are down; there is a much greater sense of control at the border; the Hispanic population has clearly signaled at the polls that the immigration system must be fixed; a shift in U.S. public opinion offers greater possibilities for compromise; and the vulnerability of unauthorized migrants, particularly Central Americans, has become a moral scandal. These important variables add up to a more favorable setting to pursue immigration reform. Immigration reform, however, must deal with an array of factors tied to the past, the present, and the future. And there may not be enough political will to push a comprehensive immigration reform through Congress. Reforms may best be achieved through a piecemeal approach, one that segments different populations and issues. This will allow the administration to tackle each issue individually. A piecemeal approach is also likely to provide hesitant members of Congress the opportunity to take cover from constituents opposed to comprehensive reforms.

The proposals put forth here to overhaul and modernize the immigration system include:

1. Passage of the DREAM Act to address the situation of the young, particularly those who qualified for DACA. This would resolve the status of 1.6 million of the 11 million people currently living in the United States without authorization.
2. A path to legal status for those who are already here, who are employed, and who have stayed out of trouble with the law. One method to accomplish this is to allow their U.S. citizen adult children to petition for them. This proposal would resolve the status of several million additional workers.
3. A measure that provides for the reunification of families. This proposal, of course, is likely to be controversial because it involves the potential return of a number of deported individuals; however, their U.S. citizen children, without family support, could grow up to be a burden to the system and cost more than allowing family reunification now.
4. A plan that addresses the future needs of the U.S. economy. The current visa system is too inflexible, and the U.S. economy in good times produces many jobs that eager-to-work migrants cannot legally fill. This situation can be addressed by indexing the visa system to economic performance and labor needs.

To accomplish these goals, the author suggests that the administration convene a group of immigration experts who can quickly put together a strategy to introduce each proposal at opportune times. This group should have the ability to negotiate openly with members of Congress on the details of the proposals.

If the administration does not take advantage of this opportunity soon, deportations will continue to separate families; criminal organizations will continue to victimize unauthorized migrants willing to risk their lives to enter the United States; and the future needs of the U.S. labor market will not be met as the economy recovers and creates a demand for more workers. The opportunity for immigration reform has not been better in many years. The time to act is now.

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1,2. The reality is that most estimates will necessarily be quite inaccurate because of the clandestine nature of the phenomenon. The numbers are debatable and may be much higher.

3. Of course, not all of these are low-skilled jobs. In the construction sector, for example, employers spend much time training workers in the installation of complex fixtures and other tasks that require solid qualifications. An employer who cannot find a worker willing to stay with the company after having acquired those skills should be able to petition for trained workers much in the way that other businesses, such as universities, think tanks, research laboratories, etc., are allowed to petition for highly skilled workers, such as engineers, professors, doctors, nurses, etc. A main point is that companies that have spent time and resources in training workers should not have to lose that human capital.

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