

Acknowledgment

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“Immigration Policy Workshop Report”

Executive Summary

On May 5, 2021, the Center for the United States and Mexico (CUSMX) and the Center for Houston's Future (CHF) held a workshop on the state of immigration in the United States and more specifically, the status of the undocumented population and their place in American society. This workshop was part of a larger CUSMX project on immigration titled "Practical Solutions for Addressing the Immigration Challenge." The CUSMX and CHF have worked jointly on immigration issues since 2018, convinced of its importance to Houston, to Texas, and to the United States and firm in the belief that it is increasingly imperative to reform the nation's immigration system—including its approach to unauthorized residents.

Over the course of the day, participants identified several opportunities to create a consensus on realistic, politically feasible immigration reforms. The new U.S. administration was viewed as the key element in generating opportunities for change. The group also agreed that an important part of any reform is to resolve, once and for all, the status of the undocumented population and to create a modern immigration system that meets the needs of the U.S. economy. Controversies and debates about the legal status of this population, along with unsettled questions about border security, have in fact long thwarted efforts to create a 21st century U.S. immigration system.

Workshop Organization

This workshop¹ brought together a wide range of immigration experts who, under Chatham House rules, considered key policy issues and identified specific steps the Biden administration can and should take to advance immigration reforms. The workshop involved 36 participants, including academic researchers, lawyers and other legal scholars, policy analysts, and on-the-ground immigration practitioners.

Two panel discussions helped to frame the issues and featured timely research on lasting solutions for the nation's large undocumented population and potential changes to U.S. visa policies. Panelists included experts from Bipartisan Policy Council, Migration Policy Institute, National Immigration Forum, New American Economy, the Bush Institute, and authors of immigration-related research commissioned by the CUSMX. Breakout sessions with no more than 10 participants each followed the panels to facilitate discussions on policy action items in light of a new U.S. administration and its priorities.

¹ See Appendix A for the workshop agenda.

Discussion Topics

It has been three-and-a-half decades since the U.S. last enacted comprehensive immigration reforms. In the intervening years, political and policy gridlock on immigration issues has resulted in an outdated system that requires a new vision consistent with today's realities. For instance, it is more and more apparent that the foundational principles for U.S. entry—family reunification and higher-skilled labor—fail to take into account important segments of the national labor market that often demand less-skilled labor. Millions of unauthorized migrants have filled this labor need, toiling daily in key sectors such as construction, agriculture, food processing, landscaping, and the restaurant and hospitality markets, among others. Thus, a key question is how to deal with the status of the 10.5 million undocumented immigrants currently residing in the United States, the majority of whom work in economic sectors that lack a legal, government-sanctioned route for U.S. entry. The unresolved status of undocumented immigrants has obstructed efforts to reform the U.S. visa system in a way that considers all segments of the U.S. labor market, including lesser-skilled workers.

Against this backdrop, the U.S. labor force is set to undergo significant demographic changes in the coming decades. The U.S. Census Bureau estimates that by 2034, for the first time in U.S. history, older Americans will outnumber those under the age of 18. With an aging society, low fertility rates, and lower rates of international migration, there is no doubt that immigration will play a crucial role in America's economic recovery and future prosperity.² Modernizing the overall immigration system to allow for new and innovative routes for legal migration is thus becoming more pressing.

Undocumented Immigrants

How the U.S. should handle the legal status of unauthorized immigrants is, as noted, a matter of great controversy, and the divisiveness it engenders has stalled efforts to enact immigration reforms in step with today's world.³ In light of this, workshop participants sought to identify practical and efficient alternatives to wholesale reforms that are unlikely to get full approval.

The discussion began with a possible catalyst for positive change: on February 18, 2021, the United States Citizenship Act of 2021 was introduced in the U.S. House of Representatives. This bill proposes an earned, eight-year path to citizenship for nearly all of the 10.5 million undocumented immigrants residing in the United States, eliminates restrictions on family-

² Ali Noorani and Danilo Zak, "Room to Grow: Setting Immigration Levels in a Changing America," National Immigration Forum, February 3, 2021, <https://immigrationforum.org/article/room-to-grow-setting-immigration-levels-in-a-changing-america/>; Jonathan Vespa, Lauren Medina, and David M. Armstrong, "Demographic Turning Points for the United States: Population Projections for 2020 to 2060," U.S. Census Bureau, March 2018/Revised February 2020, <https://www.census.gov/content/dam/Census/library/publications/2020/demo/p25-1144.pdf>.

³ Daniel J. Tichenor, "The Quest for Elusive Reform: Undocumented Immigrants in a Polarized Nation," Baker Institute for Public Policy, March 2021, <https://doi.org/10.25613/JDN8-TN64>.

based immigration, and expands worker visas.⁴ While immigration experts and workshop participants agree that the measure is unlikely to win enough bipartisan support to pass in its entirety, parts of the proposal passed now could still have a lasting impact.

Another way to advance the immigration agenda, and the most immediate and achievable action, is a relief path for DREAMers. Congress is currently considering two bills—the Dream Act of 2021 (S. 264), and the Dream and Promise Act of 2021 (H.R. 6)—that could help up to 4.4 million DREAMers establish lawful permanent residency. It is time for Congress to act and provide a permanent relief solution. Other much-needed earned pathways to legal status should target specific populations such as undocumented agricultural workers and the estimated 5.2 million undocumented immigrants working in jobs designated as essential during the COVID-19 pandemic.⁵ The discussants also considered a mix of strategies to help to adjust an immigrant’s status or provide other relief, such as allowing and expanding Parole in Place (PIP),⁶ Permanent Residence Under Color of Law (PRUCOL), temporary protected status (TPS), avenues for more family-based legalization, or other programs and or visa categories that would allow some flexibility to our current immigration system.

Adjustment of statuses was also a topic of discussion. For example, in April 2021, the U.S. Supreme Court heard arguments in *Sanchez v. Mayorkas*. The case dealt with whether Temporary Protected Status authorizes eligible noncitizens to obtain lawful-permanent-resident status.⁷ On June 7, 2021, the Supreme Court ruled unanimously to deny adjustment of status to TPS recipients who unlawfully entered the country. In view of this expected ruling, we agreed that the administration or Congress should move forward with proposed bills that protect TPS holders and designate a pathway to legal permanent resident status.⁸ This is a logical move, as many TPS holders have lived in the United States for over 20 years and continue to contribute to the U.S. economy.⁹ Another step toward regularization workshop participants discussed was updating the registry date, a mechanism already in place through a 1929 law, which can provide an avenue to individuals to secure a lawful status

⁴ Sadikshya Nepal, “U.S. Citizenship Act of 2021: What It Does and Does Not Do for High-Skilled Immigration Reform,” Bipartisan Policy Center, February 26, 2021, <https://bipartisanpolicy.org/blog/u-s-citizenship-act-of-2021/>.

⁵ FWD.us, “Estimates Show Immigrant Essential Workers are Crucial to America’s COVID-19 Recovery,” December 16, 2020, <https://www.fwd.us/news/immigrant-essential-workers/>.

⁶ See Catherine Glazer, “The Materialization of a Dream: Creating a Pathway to Permanent Residency for DACA Recipients,” Baker Institute for Public Policy, February 2021, <https://doi.org/10.25613/AP07-3J32>; Steven Sacco and Sarika Saxena, “Permanently Residing Under Color of Law: A Practitioner’s Guide to an Ambiguous Doctrine,” *City University of New York Law Review* 23, no. 2 (Fall 2020), <https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1507&context=clr>.

⁷ *Sanchez v. Mayorkas*, Oyez, <https://www.oyez.org/cases/2020/20-315>.

⁸ Congressional Research Service (CRS), “Temporary Protected Status and Deferred Enforced Departure,” updated May 28, 2021, <https://fas.org/sgp/crs/homsec/RS20844.pdf>.

⁹ Nicole Prchal Svajlenka, Angie Bautista-Chavez, and Laura Muñoz Lopez, “TPS Holders Are Integral Members of the U.S. Economy and Society,” Center for American Progress, October 20, 2017, <https://www.americanprogress.org/issues/immigration/news/2017/10/20/440400/tps-holders-are-integral-members-of-the-u-s-economy-and-society/>.

in the United States if they meet certain requirements.¹⁰ However, Congress has not updated the law since 1986. A small but significant change like updating the eligibility date for regularization could allow millions of undocumented immigrants already residing in the United States an opportunity to obtain legal status.¹¹

Moving from alternative avenues for legal status, the group broached the related subject of the current backlog of nearly 1.3 million immigration court cases.¹² Suggestions to help clear the calendar—and resolve cases that have been pending for years—included returning certain docketing tools to judges system and devoting more resources to immigration agencies so they can process the cases fairly, effectively, and quickly. Finally, the participants considered long-term goals that may not be achievable by the midterm elections or this administration but should be on the agenda. These include establishing an independent court system, eliminating the three- and 10-year unlawful presence bars for reentry to the United States, and one of the biggest areas for improvement in our immigration system: addressing visa overstays. Often overshadowed by the border wall debate, it is estimated that around 60% of the undocumented population first arrived legally, and overstayed their visas.¹³ A solution is needed to solve the status of this current population, and to provide funding for efficient entry-exit tracking systems to dissuade future visa overstays.

The U.S. Visa System

During the breakout sessions, we asked the participants to identify the top policy changes needed in the visa system that might be politically feasible under the Biden administration. All expressed the desire to see the U.S. visa system better align with the country's economic, social, and general immigration goals. It is generally understood and accepted that immigration is, on balance, an economic benefit to the U.S. This is acutely clear in the recent census, which shows the U.S. with a declining and aging population. Projections estimate that workforce growth in the next few decades will come from immigrants and their children.¹⁴

¹⁰ CRS Report for Congress, “Immigration: Registry as Means of Obtaining Lawful Permanent Residence,” updated August 22, 2001, https://www.everycrsreport.com/files/20010822_RL30578_b6b77deb52a8d08bd4f16737dd2fffe3088cd52c.pdf.

¹¹ See FWD.us, “Immigration Registry: A potential pathway to citizenship for many immigrants,” April 15, 2021, <https://www.fwd.us/news/immigration-registry/>

¹² Elizabeth M. Mendoza, “A New Opportunity to Build a 21st-Century Immigration Court System,” Baker Institute for Public Policy, April 29, 2021, <https://doi.org/10.25613/697M-M719>; Transactional Records Access Clearinghouse (TRAC), “The State of the Immigration Courts: Trump Leaves Biden 1.3 Million Case Backlog in Immigration Courts,” January 19, 2021, <https://trac.syr.edu/immigration/reports/637/>.

¹³ Robert Warren, “U.S. Undocumented Population Continued to Fall from 2016 to 2017 and Visa Overstays Significantly Exceeded Illegal Crossings for the Seventh Consecutive Year,” *Journal on Migration and Human Security* 7, no. 1 (February 14, 2019), <https://doi.org/10.1177/2331502419830339>. “Back on the Table: U.S. Legalization and the Unauthorized Immigrant Groups that Could Factor in the Debate,” Migration Policy Institute, February 2021, https://www.migrationpolicy.org/sites/default/files/publications/mpi-rethinking-legalization-2021_final.pdf

¹⁴ William H. Frey, “What the 2020 census will reveal about America: Stagnating growth, an aging population, and youthful diversity,” Brookings Institution, January 11, 2021,

To meet U.S. economic needs, visas should be tied to workforce realities by addressing areas with worker shortages and, ideally, local variations. According to data reported by New American Economy, the nation's 3.2 million immigrant entrepreneurs employed 8 million people in 2019.¹⁵ Immigrants are two times more likely to start a business than U.S.-born residents and represent 21.7% of business owners, even though they make up over 13.6% of the population and 17.1% of the U.S. labor force.¹⁶ Immigrants are a powerful economic force, and we should be more overtly welcoming and encouraging to entrepreneurs. The mismatch between temporary and permanent status limitations should be addressed as well as the administrative barriers that restrict the move from temporary to permanent status. For example, dual intent should be allowed, as most visas do not allow it—but dual intent allows a foreign national to be in a temporary nonimmigrant status and at the same time pursue the process toward permanent residence status in the United States. The implementation of a robust and well-regulated temporary worker system could reduce mounting pressure at the southwestern border due to unauthorized crossings and adapt to variable workforce needs.

In terms of social and humanitarian considerations, an immediate improvement to our system would be to remove or raise caps and limitations on family members and to not count dependents as part of per country limits on visa permits.¹⁷ Speeding up the visa process would reduce hardships on families.¹⁸ A side benefit of a more smoothly functioning employment visa system might be to reduce pressure to migrate unlawfully and prevent visa overstays.¹⁹ Finally, our success and growth as a country has been built on immigration. We gain tremendous benefits from having a mix of cultures in the U.S. and we should recognize and celebrate the vast contributions of immigrants.

<https://www.brookings.edu/research/what-the-2020-census-will-reveal-about-america-stagnating-growth-an-aging-population-and-youthful-diversity/>

¹⁵ New American Economy, "New Data Shows Immigrant-Owned Businesses Employed 8 Million Americans; Immigrants Wield \$1.1 Trillion in Spending Power," March 12, 2019, <https://www.newamericaneconomy.org/uncategorized/new-data-shows-immigrant-owned-businesses-employed-8-million-americans-immigrants-wield-1-1-trillion-in-spending-power/>.

¹⁶ New American Economy, "Entrepreneurship," n.d., <https://www.newamericaneconomy.org/issues/entrepreneurship/>; Dane Stangler and Jason Wiens, "The Economic Case for Welcoming Immigrant Entrepreneurs," Kauffman Foundation, March 26, 2014, <https://www.kauffman.org/resources/entrepreneurship-policy-digest/the-economic-case-for-welcoming-immigrant-entrepreneurs/>.

¹⁷ Stuart Anderson, "Chapter 2: Reducing Long Wait Times for Family-Sponsored and Employment-Based Immigrants," CATO Institute, May 13, 2020, <https://www.cato.org/publications/publications/chapter-2-reducing-long-wait-times-family-sponsored-employment-based>; David J. Bier, "Immigration Wait Times from Quotas Have Doubled: Green Card Backlogs are Long, Growing, and Inequitable," CATO Institute, June 18, 2019, <https://www.cato.org/publications/policy-analysis/immigration-wait-times-quotas-have-doubled-green-card-backlogs-are-long>.

¹⁸ Sadiqshya Nepal, "The Convoluted Path from H-1B to Permanent Residency: A Primer," Bipartisan Policy Center, July 7, 2020, <https://bipartisanpolicy.org/blog/the-convoluted-path-from-h-1b-to-permanent-residency-a-primer/>.

¹⁹ Laura Collins, "Bolstering America's Economy through Employment-Based Immigration," The George W. Bush Institute, February 11, 2021, <https://www.bushcenter.org/publications/resources-reports/reports/immigration-white-papers/employment-based-immigration.html>.

Political realities are such that logical legislative change is not a given. While there is some legislation in the pipeline that might get consideration—such as the Farm Workforce Modernization Act²⁰ and Essential Workers Act²¹—other interim changes could be achieved through executive action or find bipartisan support. These include removing or changing country caps for U.S. entry, streamlining the path from temporary to permanent residency, extending Optional Practical Training (OPT) for graduates, and allowing dual intent. Longer term, more challenging policy changes include increasing the number of worker visas by eliminating or raising caps, not counting dependents toward the visa cap total, reforming the registry provision, and generally expediting the immigration process.

Public Policy Recommendations

Much of the challenge for immigration reform is that different aspects of the system are extremely intertwined, and it may be difficult to extract selected parts for reform. Yet the political reality is that comprehensive immigration reform may not win enough partisan support, and thus it is likely that only piecemeal actions will successfully pass. Key subgroups within the undocumented population—such as DACA recipients and DREAMers, farmworkers and other essential workers, parents of U.S. citizens and lawful permanent residents, and TPS holders—are ideal groups that could be accorded eligibility for a path to legal status as they are deeply tied to our communities and economy.²² Action on these groups would ease pressure on the controversial issue of undocumented immigration, for the economic gains would be sizable. If H.R. 6 and undocumented essential workers are provided a path to citizenship, U.S. GDP would boost by a total of \$1.5 trillion over 10 years and create over 400,000 new jobs, according to a recent study.²³

A 21st century approach to U.S. immigration is direly needed, with targeted strategies to modernize the system, reduce the undocumented population, and effectively manage future immigration flows. The United States needs laws and policies that consider today's immigration realities, instead of focusing on a punitive enforcement system that hinders the establishment of a fair and effective system. If the political will or momentum needed to carry out comprehensive reforms cannot be realized, the following outlines achievable recommendations for the Biden administration:

²⁰ H.R.1603–Farm Workforce Modernization Act of 2021, 117th Congress (2021-2022), <https://www.congress.gov/bill/117th-congress/house-bill/1603>.

²¹ S.747–Citizenship for Essential Workers Act, 117th Congress (2021-2022), <https://www.congress.gov/bill/117th-congress/senate-bill/747/text>; H.R.1909 - Citizenship for Essential Workers Act, 117th Congress (2021-2022), <https://www.congress.gov/bill/117th-congress/house-bill/1909?s=1&r=7>.

²² Ibid.; Catherine Glazer; Jessica Bolter, Muzaffar Chishti, and Doris Meissner, “Back on the Table: U.S. Legalization and the Unauthorized Immigrant Groups that Could Factor in the Debate,” Migration Policy Institute, February 2021, https://www.migrationpolicy.org/sites/default/files/publications/mpi-rethinking-legalization-2021_final.pdf.

²³ Giovanni Peri and Reem Zaiour June, “Citizenship for Undocumented Immigrants Would Boost U.S. Economic Growth,” Center for American Progress, June 14, 2021, <https://www.americanprogress.org/issues/immigration/reports/2021/06/14/500433/citizenship-undocumented-immigrants-boost-u-s-economic-growth/>.

Recommendation 1: Resolve the status of DREAMers. This includes expanding eligibility and mechanisms like parole-in-place and providing permanent legal status and/or a path to citizenship.

Recommendation 2: Pass legislation that provides less-skilled workers with more legal routes to U.S. entry, including temporary work authorizations and a path to legal status for certain subgroups of undocumented immigrants, such as essential and agricultural workers, parents of U.S. citizens and legal permanent residents, and long-term undocumented immigrants residing in the United States who meet certain requirements and contribute to the American economy.

Recommendation 3: Increase funding to the Executive Office for Immigration Review (EOIR), providing support for—among other things—more staff to address the current backlog of 1.3 million cases on the docket and reduce the average 830-day per case wait time for a court hearing. Many cases could be easily adjudicated with the appropriate resources, contributing to a more efficient and effective immigration court system.

Recommendation 4: Eliminate per-country caps for employment-based visas and continue to reform employment-based visas, including consideration for all kinds of labor market needs.

Recommendation 5: Conduct a comprehensive review of the U.S. visa system to expand visa types and index each visa type to shifts in the nation's labor market. This will provide flexibility for workers to enter and leave the U.S. as needed.

Recommendation 6: Implement robust interior and border enforcement priorities in line with current immigration realities that should uphold family unity.

Recommendation 7: Define and operationalize the concept of border security, removing an argument that prevents many legislators from committing to immigration reforms.

Appendix A - Workshop Agenda



Center for Houston's Future and Rice University Baker Institute Center for US and Mexico
Immigration Policy Workshop
May 5, 2021
Agenda (draft)

- 9:00 Welcome and introductions Brett Perlman, President and CEO, CHF
Tony Payan, Director, CUSMX
- 9:15 Remarks from Stan Marek
- 9:25 Format and agreements
- 9:30 Panel on US Visa System
Moderator: Loren Steffy, Rational Middle Video
Panelists:
Julia Gelatt, Migration Policy Institute
Sadiksha Nepal, Bipartisan Policy Center
Jeremy Robbins, New American Economy
Danilo Zak, National Immigration Forum
- 10:05 All participants go into breakout sessions for facilitated discussion on policy action steps
- 10:40 Breakout groups report back
- 11:00 Break
- 11:10 Panel on Undocumented Immigrants
Moderator: Theresa Brown, Bipartisan Policy Center
Panelists:
Laura Collins, Bush Institute
Daniel Tichenor, University of Oregon, commissioned research
Elizabeth Macias Mendoza, Immigration Attorney, commissioned research
Catherine Glazer, Immigration Attorney, commissioned research
- 11:45 All participants go into breakout sessions for facilitated discussion on policy action steps
- 12:20 Breakout groups report back
- 12:40 Review outcomes. Whole group discussion/virtual vote on priorities. Plans for Fall Summit.
- 1:00 Adjourn