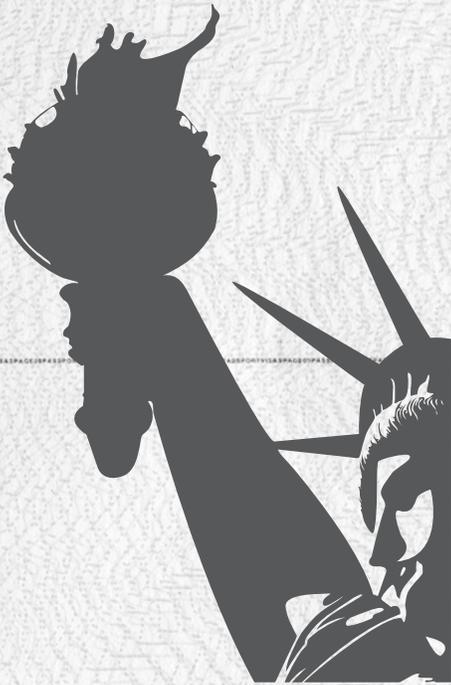


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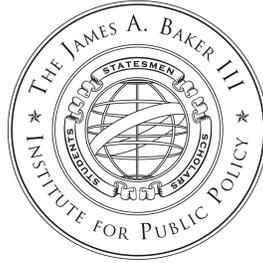
A SYSTEM FOR THE 21st CENTURY



Conference Report

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JAMES A. BAKER III INSTITUTE FOR PUBLIC POLICY
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IMMIGRATION REFORM:
A SYSTEM FOR THE 21ST CENTURY

CONFERENCE REPORT

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Conference Report—Immigration Reform: A System for the 21st Century

Introduction

There is a growing consensus that the U.S. immigration system is broken. Current policies do not respond to the needs of the U.S. economy, and have compromised civil rights, created a humanitarian crisis, and increased the potential for a public safety and security crisis, since many immigrants fear the police and fail to report crime in their homes and neighborhoods. Yet fixing the immigration system, though necessary, will not be a simple task. And although support for U.S. immigration reform is currently as strong as it has been in decades, disagreements about the details of the law are weighing down the legislative process and threatening to halt progress.

On April 9, 2013, the Baker Institute Latin America Initiative convened scholars and experts from across the country to discuss these and other issues at a daylong conference, “Immigration Reform: A System for the 21st Century.” During panel discussions and individual presentations, the participants addressed proposed immigration reforms against a backdrop of congressional dynamics and demographic changes in the United States.

Debated issues include the following:

- The U.S. visa system. Some authors argued that the U.S. visa system is the origin of the problem because applicants face years-long delays in processing, and the U.S. is not getting the high- and low-skilled workers it needs (Orrenius and Zavodny 2013). This group asserts that the types and numbers of work visas available should be increased, and advocates for a robust guest worker visa program. However, others claimed that in a faltering economy, the first priority should be educating and retraining the American workforce.
- Undocumented immigrants. Advocates for reform observe that it is neither logistically feasible nor morally defensible to deport the entire undocumented population (Hinojosa 2013). Among other issues, mass deportation would create a humanitarian crisis by uprooting millions of individuals and separating them from their families (Gleeson and Abrego 2013). Reform advocates argue that undocumented workers and their families should have access to a path to citizenship, although there is not yet consensus about the

Conference Report—Immigration Reform: A System for the 21st Century

requirements of such a plan. Opponents view legalization as a reward to undocumented immigrants for breaking the law.

- Civil liberties. Critics of the U.S. immigration system argue that current laws compromise civil liberties by depriving undocumented immigrants of basic constitutional rights (such as a day in court, a fair hearing, and the right to counsel) and lead to civil rights violations (such as indefinite detention). Moreover, they contend that the current system isolates entire immigrant communities from the protection of local law enforcement agencies. A well-founded fear of detection and deportation stops many immigrants from interacting with law enforcement and from reporting criminal activity in their homes and neighborhoods. This represents a public safety and security problem, since the lack of trust and cooperation between immigrant communities and local law enforcement obstructs the authorities' duty to protect the community (Olivas 2013).
- Enforcing U.S. laws. Many believe that domestic enforcement of immigration laws should be strengthened through harsher penalties for employers who hire undocumented workers and by scaling up the system to verify employment eligibility. Critics of these measures are concerned about placing the burden of enforcement on employers. They also question the idea of requiring authorities to monitor the eligibility of every worker, probably through national identification cards that some perceive as government overreach.
- Border security. Many argue that undocumented immigration is unrelated to investments in border security; the problem is not the border per se but an inadequate visa system that does not provide for a lawful and orderly flow of workers (Martin 2013). This group links the recent drop in undocumented migration to a downturn in the U.S. economy and the demographic changes in Mexico and Central America rather than to border security. When the U.S. economy fully recovers, undocumented migration will resume, they say, causing many more deaths as migrants once again risk their lives to cross the harsh deserts of the Southwest. Others argue for stricter border security measures as a condition for creating a legalization process for undocumented immigrants already in the United States. This group wants to increase not only investments to seal the U.S.-Mexico border but also the penalties for crossing the border without documents.

Conference Report—Immigration Reform: A System for the 21st Century

Current Immigration Legislation

The success of immigration legislation will depend on reaching a consensus on the disputed issues above (Papademetriou 2013). Polls clearly show that the American public is increasingly frustrated with the current immigration system; a resolution to the outdated U.S. immigration system cannot be delayed much longer. Previous immigration bills introduced by Democrats and Republicans include the Secure America and Orderly Immigration Act of 2005, the Comprehensive Enforcement and Immigration Reform Act of 2005, the Comprehensive Immigration Reform Act of 2006, and the Comprehensive Immigration Reform Act of 2007. All were supported by President George W. Bush. All failed to pass. But the Border Security, Economic Opportunity, and Immigration Modernization Act of 2013, supported by a bipartisan group of eight Republican and Democratic senators (known as the “Gang of Eight”), as well as President Barack Obama, stands a much better chance of success. Research by the Baker Institute and conference participants shows that the Senate bill, in particular, achieves a delicate balance between the concerns of each political party and leaves sufficient room for compromise to satisfy many stakeholder groups. Even so, the House of Representatives may not see it that way.

Conditions for Change

The current immigration crisis in the United States, the political environment after the 2012 elections, and the relative softening of U.S. public opinion on immigration present an opportunity to galvanize the congressional support needed to pass comprehensive immigration reforms. The time has come to replace the current dysfunctional system with a modern and flexible immigration system that suits the changing needs of the American economy (Martin 2013). This is evident to the “Gang of Eight”. Their bill correctly identifies four major areas in need of reform and achieves a fine political balance that may lead to its passage. The House of Representatives has not yet released its own proposal.

Although there are some notable differences between the Senate bill and the discussions of immigration reform in the House of Representatives, there seems to be enough agreement on the major pillars for reform (discussed below) and sufficient political will to pass the bill in both

Conference Report—Immigration Reform: A System for the 21st Century

houses—even if some see the House as considerably more difficult and likely to curtail some of the more “generous” provisions of the Senate’s bill. Successful reform measures will depend on the balance achieved in the details of the final bill presented to Congress (Tichenor 2013). However, the balance will be precarious. In order to be successful, voices on all sides of the issue must be given a chance to make changes to the bill to ensure sufficient support when it comes to the floor for a final vote. We believe that the window of opportunity to achieve reform is limited. If the bill is not passed before Congress recesses for the summer, it must be presented in the early fall. Delaying a vote until 2014 will likely politicize the issue and slow momentum as midterm elections approach.

Major Components of Immigration Reform

There is broad agreement on the four major components that must be considered in immigration reform: 1) a path to legalization for the estimated 11 million undocumented residents; 2) a new immigration system that considers more closely the changing dynamics of the American economy; 3) stronger domestic enforcement of immigration laws; and 4) a tightening of border security to prevent another influx of undocumented migrants in the future. Although there is remarkable agreement between Democratic and Republican proponents of immigration reform on these four issues, as well as solid support from the American public, consensus on the details will be hard won.

The participants of the Baker Institute immigration conference broadly supported each of these pillars, but suggested diverse approaches to address them. It is important to allow as much time as possible for the bill’s mark-up period so that groups on both sides of the debate can express concerns without jeopardizing passage. Public debate might delay a vote in Congress, but it is important that these groups be heard because their exclusion could potentially derail the bill. It is crucial to address all views for and against the bill before the opportunity for immigration reform fades and momentum is lost as the year ends.

Conference Report—Immigration Reform: A System for the 21st Century

Immigration Reform: A System for the 21st Century

The Baker Institute commissioned 14 papers for the conference on “Immigration Reform: A System for the 21st Century.” This conference report, coordinated by Tony Payan, Baker Institute Scholar for Immigration Studies, and Erika de la Garza, director of the Latin America Initiative, includes key findings from these papers. Funded by the Ray C. Fish Foundation, the papers analyze the issues presented by various aspects of the current immigration system and provide a number of policy recommendations. This report also examines the immigration proposals currently before Congress.

The issues analyzed in the 14 commissioned papers include the reasons behind the post-election momentum for immigration reforms; how demographic changes are affecting U.S. public opinion on immigration; the impact of the current immigration system on workers and families; immigrants in the U.S. labor market; the costs and benefits of immigration; nativism and other ideological cross-currents in the immigration debate; security and immigration; immigration and technology; local responses to immigration issues, including a study on Texas’ response; the congressional dynamics of immigration reform; and the likely components of immigration reform.

The Four Pillars of Immigration Reform

The conference participants discussed the four major pillars of immigration reform from an array of perspectives and offered specific recommendations for each. The next four sections expand on the research conducted on each pillar. In a separate section further below, the conference participants’ recommendations are outlined.

The Undocumented Resident Population

A key question in the immigration reform debate concerns the future of the undocumented resident population—an estimated 11 million unauthorized migrants living within the boundaries of the United States. There is broad agreement that mass deportation is not feasible or practical. These immigrants have formed deep roots in the United States, starting families, holding jobs,

Conference Report—Immigration Reform: A System for the 21st Century

and becoming part of the social and economic fabric of their communities (Gleeson and Abrego 2013). Because many now live in mixed-status families, separation would not be humane. There is deep disagreement on approaches to resolving the issue of the undocumented population. Many support a full path to citizenship over a number of years, but opposing voices argue the route rewards those who entered the United States illegally.

The immigration bill under consideration in Congress creates a path to citizenship, although undocumented immigrants will have a much longer journey than legal immigrants and the burden of paying hefty fines. Under the current bill's provisions, an undocumented worker must receive temporary protected status and spend 10 years in the United States before becoming a legal permanent resident. After that, at least three years would have to pass before the worker could apply for citizenship. In addition, only those who entered the United States before December 31, 2011, would be eligible. The bill creates a shorter path for immigrant youths who qualified under the Deferred Action for Childhood Arrivals program.¹

While the claims of critics who say these measures amount to amnesty for lawbreakers have some validity, the waiting period is lengthy and does nothing to encourage immigrants to integrate into mainstream society. It also leaves several hundred thousand people ineligible by excluding those who entered the United States after 2011.

Domestic Enforcement

The undocumented resident population has increased throughout the years not only because of the “pull forces” of the U.S. economy and the “push forces” of Mexican and Central American economies, but also because enforcement of U.S. laws, particularly in the workplace, has been relatively weak. The voluntary nature of the employment eligibility verification system known as E-Verify makes its use sketchy and unreliable. Some of the authors advocate for expanded workplace enforcement, with particularly harsh consequences for employers rather than employees. The new system should include a radical expansion of the E-Verify system and a

¹ Under the Deferred Action for Childhood Arrivals program, immigrant youths can request a temporary two-year reprieve from deportation and apply for a work permit if they meet a series of requirements, including being under the age of 30, having entered the United States before their 16th birthday, and completion of high school or service in the U.S. armed forces.

Conference Report—Immigration Reform: A System for the 21st Century

qualitative jump in both coverage and accuracy. Its use should be mandatory for all employers and some immigration enforcement resources should be directed toward building and maintaining its effectiveness (Orrenius and Zavodny 2013).

Foreign visitors who remain in the United States beyond the expiration date of their visas are also a major problem. Some estimate that half of the undocumented resident population entered the country with authorization and overstayed their visas. This is not a problem that can be solved by increasing border security because it relates directly to domestic enforcement. Nearly 400 million visitors enter the United States every year. Tracking the exit of every single authorized visitor would be a nearly impossible task requiring an immense expansion of the Immigration and Customs Enforcement (ICE) system and a doubling of the infrastructure at all ports of entry by land, air, and sea—and possibly a tripling of the infrastructure, which would have severe repercussions, given the already long delays at ports of entry.

The great difficulty of tracking all foreign visitors makes a large database of authorized U.S. workers crucial to ensure that those who overstay their visas are unable to obtain work. In addition, employers who continue to hire undocumented workers should be penalized heavily—but employers should also be allowed to request foreign workers more easily. One without the other would only create incentives for employers to continue to break the law.

Modes of Entry for the Unauthorized Migrant Population		
Entered Legally with Inspection	Non-Immigrant Visa Overstayers	4 to 5.5 Million
	Border Crossing Card Violators	250,000 to 500,000
	<i>Sub-total Legal Entries</i>	<i>4.5 to 6 Million</i>
Entered Illegally without Inspection	Evaded the Immigration Inspectors and Border Patrol	6 to 7 million
Estimated Total Unauthorized Population in 2006		11.5 to 12 Million
Source: Pew Hispanic Center Estimates based on the March 2005 Current Population Survey and Department of Homeland Security reports.		

Conference Report—Immigration Reform: A System for the 21st Century

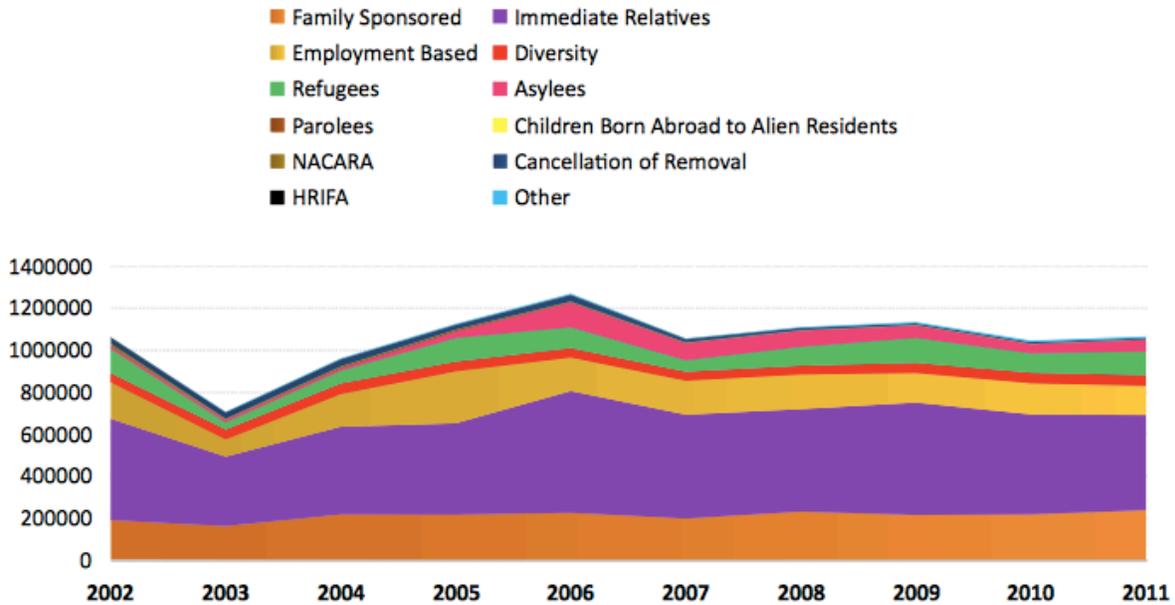
The failure of Congress to act on immigration reform for decades has exacerbated the law enforcement bias of the present system. Over time, the militarization of the U.S.-Mexico border and unrestricted deportation have become the two main strategies of dealing with immigration. This approach has led to a systematic denial of the basic legal rights of undocumented immigrants who are placed in the immigration detention system. Most immigrants in detention facilities do not have sufficient access to legal counsel because of the geographic isolation of the facilities and under-funded legal aid organizations (National Immigrant Justice Center 2010). Few immigrants actually go to an immigration court or receive a fair hearing; an increasing number are detained indefinitely without due process.

This law enforcement approach to immigration has compromised civil rights, making our basic values relative and putting in peril the human rights of an entire class of persons based on their immigration status.

New Visa System

The current visa system was designed with family reunification as a founding principle, but rarely takes into consideration the shifting dynamics of the American economy. Work visas are limited in number, do not cover the types and number of jobs produced in a thriving economy, and can only be modified by an act of Congress.

Permanent Residencies by Year



Source: Taylor Britt, Rice University, based on Department of Homeland Security statistics.

Border Security

Border security is the most contentious component of proposed immigration reforms. Opponents of a path to citizenship for the undocumented resident population argue that, first and foremost, the border must be secured to stem future flows of undocumented workers. Their primary fear is that in two or three decades, the United States may be in the same situation it finds itself in today. They cite the 1986 immigration bill, which legalized nearly three million undocumented migrants—yet undocumented immigration was still a growing problem two decades later.

This is a legitimate concern. However, other immigration-related reforms appear to be on hold because of the focus on border security (Totten 2013). It is likely a mistake to defer efforts to legalize the undocumented resident population, strengthen the U.S. enforcement system, and update the current immigration and visa system. While the border is inextricably linked to immigration flows, the forces that drive human mobility begin and end far from the border.

Conference Report—Immigration Reform: A System for the 21st Century

Conference Findings

The major conference findings—an outgrowth of the research papers written for the study—are below:

Immigration and voters

The contentious nature of the immigration debate and the poor prospects for reform changed almost overnight in November 2012, when the shifting make-up of the electorate became evident to both Republicans and Democrats. This suggests that the public policy environment on immigration may have been less stable than imagined in the 2000s, when the Latino population first influenced immigration issues at the polls. Moreover, after the 2012 election, immigration seems to have failed as a wedge issue, with the Republican Party now changing its stance on immigration reform in order to appeal to Latino voters—at the risk of alienating its more conservative base (Valenzuela 2013). Despite this risk, immigration reform is considered the best way to take the immigration issue off the table once and for all, and has significant bipartisan support.

Demographics

The prominence of immigration on Congress' agenda is related to the size and continuing growth of the Latino population. However, this connection is not uniform throughout the country. The salience of immigration reform issues among Latino voters ranks higher in states and counties where the Latino population is a minority and lower in areas where Latinos are a majority. This phenomenon will increase two-party competition in states and counties where the Latino population can make a difference in local elections (Valenzuela 2013).

Assimilation

Current immigration policy is shaping the Latino experience in the United States. Since millions of Latino residents are undocumented, know someone who is undocumented, or have mixed legal status families, many fail to integrate into mainstream society and cannot fully enjoy the rewards of work, an active social life, and the full protection of the law. This has created a humanitarian quandary because many Latinos live an underground life and are permanently

Conference Report—Immigration Reform: A System for the 21st Century

disenfranchised from U.S. society. Even immigrants who enjoy a temporary protected status (TPS), which some legislators have touted as the solution for dealing with the undocumented population, face many of the same obstacles to integration (Payan 2013).

Federal inaction

The federal government's failure to address immigration issues in the 2000s led local and state governments to respond with their own initiatives. Some state legislatures, frustrated by the lack of political will in Congress, passed restrictive omnibus legislation. Although there was some variation within parties, the perception that Democrats opposed restrictive measures and Republicans supported them may have contributed to the 2012 elections that gave new life to immigration reform efforts (Jones and Chou 2013; Payan 2013).

State initiatives

Local responses to immigration issues have been diverse. The patchwork of local initiatives ranged from restrictive measures, such as Arizona's SB 1070 (which requires police to determine the immigration status of anyone they suspect to be in the country illegally), to generous measures, such as California's immigration-related laws (which allow undocumented students access to state and private scholarships for university). More puzzling, however, is the moderation of a handful of states that were expected to pass highly restrictive immigration laws. Among these is Texas, where both Democratic and Republican legislators rejected most of the tough immigration measures proposed in the past several legislative sessions. This further illustrates the range of statewide responses prior to the national election that built momentum for U.S. immigration reform (Jones and Chou 2013).

Citizenship

Immigration has been and will continue to be an essential part of U.S. history. Acknowledging this reality begs the question of how immigrants are integrating into the American mainstream. This question is pressing because the United States currently does not have a national immigrant settlement program. Immigrants from Mexico make up the largest foreign-born population in the United States today, yet they are the least likely to apply for citizenship after they qualify. However, the number of naturalized U.S. citizens rose between 1995 and 2010. This spike could

Conference Report—Immigration Reform: A System for the 21st Century

be attributed to an increasingly hostile environment for immigrants, with many seeking citizenship to avoid deportation.

Economy

The U.S. has one of the most dynamic economies in the world. Its ability to create jobs over the long term remains strong. Immigrants provide skills that are in relatively short supply in the U.S. labor market—in fact, immigrants contributed half of all labor force growth since the mid-1990s, underscoring the U.S. economy’s dependence on foreign labor. Immigrant workers are concentrated in the lower and higher skill ends of the labor force. The benefits of the immigrant labor force are quantifiable as well. Low-skilled labor keeps consumer prices in check, while high-skilled immigrant workers fuel innovation and entrepreneurship. Additionally, it is well established that immigrants have had a positive fiscal impact, contributing more in taxes than they use in public services (although local governments fund the latter, which explains the hostility toward undocumented migrants in many communities). A guest worker program should continue to attract high-skilled workers to the United States, but it should also include low- and mid-skilled workers who have a positive impact on the economy (Orrenius and Zavodny 2013).

Law enforcement

Twenty-five years of congressional inaction on immigration reform have forced the federal government to rely on enforcement-only strategies. Most of these efforts have focused on the U.S.-Mexico border, with an increasing but still modest number centering on domestic enforcement. These efforts have failed to control undocumented immigration, and the recent decline in immigration is probably more a result of the weak U.S. economy than enforcement efforts at the border. What’s more, these efforts are counterproductive since they force many circular migrants (who intend to migrate only for a temporary amount of time) to stay inside the United States because they fear they will be caught and punished if they attempt to return to their country of origin. This leads to a higher number of permanent undocumented residents and creates underground labor markets that depress wages, lower consumption and taxes, and reduce productivity. The cost of the current enforcement-only immigration policy includes the expense of law enforcement efforts at the border as well as the economic effects of the approach on the

Conference Report—Immigration Reform: A System for the 21st Century

U.S. economy. Legalizing the undocumented resident population and providing for a lawful and orderly flow of immigrants is likely to eliminate the harmful effects of the enforcement-only approach and create economic benefits for immigrants and citizens alike.

Security issues

An approach to immigration that emphasizes law enforcement raises questions about the relationship between security and immigration. The two issues have become increasingly interrelated, and any debate about immigration today involves three security dimensions: domestic security (a topic that was further reinforced by the April 15, 2013, bombings in Boston); material and military considerations (underscored by the deployment of drones and the increasing militarization of the border); and foreign policy. Thus, immigration reform involves many non-economic issues. The new immigration system must include security considerations sufficient to satisfy the concerns of legislators (Totten 2013).

Technology

Technology's role in immigration should be viewed in socio-technical terms. It is ideally a system that allows decision-makers to quickly respond to changes in, for example, the economy by modifying technological approaches to the flow of humans across borders. Immigration must be understood as a human aspiration; the technology used to facilitate human mobility must therefore be adaptable, flexible, and responsive (Nieto 2013).

Ideology

Longstanding ideological battles between Americans and legislators supporting restrictive immigration measures and those favoring more accommodating laws have shaped the U.S. immigration policies that exist today. The education of undocumented immigrants is an example of such a battleground. The most recent wave of restrictive policies aims to deny a public education to the children of undocumented immigrants and a college education to undocumented high school graduates. However, the number of accommodating education policies is increasing. Many states have passed legislation allowing students to attend schools and obtain a college education regardless of their immigration status. This accommodating attitude was reinforced by the Deferred Action for Childhood Arrivals program unveiled by President Barack Obama in the

Conference Report—Immigration Reform: A System for the 21st Century

summer of 2012. Nevertheless, even if comprehensive immigration reforms are enacted, the struggle between restrictive and accommodating approaches to immigration will continue to impact future policies and legislation.

Strange bedfellows

Immigration reform is a classic example of how inter- and intra-party conflicts can delay, restrict, and even thwart legislative changes. Sweeping reforms often necessitate unexpected alliances and “grand bargains” to address ideological differences on public policy issues. Immigration reform has already created unusual alliances such as the Gang of Eight; the current proposal engages multiple stakeholders such as members of Congress, the general public, constituent groups, and key voting blocs (Tichenor 2013).

Congress’ ability to pass an immigration reform bill

Congress’ ability to pass a comprehensive immigration reform bill depends on three factors: 1) the ability to unite coalitions that support specific parts of the current bill while preventing their division over the bill’s more controversial aspects; 2) the use of verifiable facts to assure Americans that immigrants will successfully integrate into the mainstream in order to create solid public support for immigration reform; and 3) the determination to work through the problems associated with each provision, including border security, domestic enforcement, the path to citizenship for undocumented residents, and new types of visas to attract the workers the American economy will need in the coming decades (Leal 2013).

These issues are in the hands of the “Gang of Eight” and those advocating for immigration reform.

Policy Recommendations

Our recommendations for immigration reforms follow, taking into consideration the research and discussions generated at the conference:

- Timing is crucial. It is critical to pass the bill before the holiday recess in December. Delaying a vote until 2014 will likely politicize the issue and slow its momentum as

Conference Report—Immigration Reform: A System for the 21st Century

midterm elections approach. Allowing sufficient time for groups on both sides of the bill to offer their mark-ups would likely ensure that all objections have been addressed.

- Create a pathway to legalization for undocumented immigrants. The legalization process should include undocumented immigrants who entered the United States after 2011. The current law excludes this group, making them ineligible for citizenship and trapping them in an underground economy. Shorten the Temporary Protected Status (TPS) period to five years or less to expedite the assimilation of immigrants. Allow permanent residents to apply for citizenship after three years of legal residence in the United States. Allow deportees with no criminal record to return legally and be reunified with their families, giving priority to those with family members who are U.S. citizens.
- Improve the visa system. The types of visas available for permanent and temporary workers should be expanded to cover low-skilled workers as well as guest workers in job sectors where most undocumented workers are employed, such as construction, and the food processing, service, and agriculture industries. The number should be indexed to economic performance within a flexible band, and changes to this number should be controlled by the director of the Bureau of Citizenship and Immigration Affairs. The ratio between family reunification-based visas and work-based visas should be close to 50-50, without sacrificing most family-based petitions.
- Strengthen and streamline domestic enforcement. Expand and fully fund the E-Verify system. The E-Verify database of eligible workers should be comprehensive and reliable. Steps should be taken to ensure that the database is secure so that the privacy of all the registered workers is protected. This recommendation, however, cannot be viewed independently of a new visa system that considers the economy's needs and adequate funding to reduce the immigration backlog. Most punitive measures should target employers, rather than employees. A database should be created that includes authorized workers and visitors; in this way, visitors can be clearly identified and rejected as unauthorized visa holders. The visitor database would have to be linked to the E-Verify system.
- Protect civil liberties and constitutional rights. The new immigration law must restore basic due process rights on immigration issues and guarantee every individual a day in

Conference Report—Immigration Reform: A System for the 21st Century

court—including a fair hearing, counsel, and an appeals process—whether his presence in the country is lawful or unlawful.

- Rethink border security. Immigration reform should present the opportunity for state and local authorities and officials from Mexico to together create an innovative border management system.

Conclusion

The prospects are good for the enactment of immigration reform measures in 2013. The influence of the Latino vote in the 2012 elections, increasing awareness of the plight of the undocumented resident population, and a shift in public opinion have together led to the most opportune moment in 20 years to achieve reforms. Any delay that pushes passage to 2014, a mid-term election year, will halt progress of the proposed legislation, as many members of Congress will necessarily consider how their vote on reforms will be received by their constituents. As Migration Policy Institute president Demetrios Papademetriou noted in his address at the conference, the House immigration bill achieves a delicate balance between many stakeholders, but this balance must be reinforced by the political will of Congress if the bill is to pass. A political balance is difficult to maintain over an extended period of time. The time for immigration reform is now, or the opportunity will be lost for many years to come.

Conference Report—Immigration Reform: A System for the 21st Century

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