



CRS Report for Congress

Immigration Reform: Brief Synthesis of Issue

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Summary

U.S. immigration policy is likely to be a highly contentious issue in the 110th Congress. The number of foreign-born people residing in the United States is at the highest level in our history and has reached a proportion of the U.S. population not seen since the early 20th century. There is a broad-based consensus that the U.S. immigration system is broken. This consensus erodes, however, as soon as the options to reform the U.S. immigration system are debated. This report synthesizes the major elements of immigration reform in the 110th Congress and provides references to other CRS reports that fully analyze these legislative elements. It will be updated as needed.

Introduction

The number of foreign-born people residing in the United States (37 million) is at the highest level in our history and has reached a proportion of the U.S. population (12.4%) not seen since the early 20th century. Of the foreign-born residents in the United States, approximately one-third are naturalized citizens, one-third are legal permanent residents, and one-third are unauthorized (illegal) residents.¹ There is a broad-based consensus that the U.S. immigration system, based upon the Immigration and Nationality Act (INA), is broken. This consensus erodes, however, as soon as the options to reform the U.S. immigration system are debated.

The 110th Congress is faced with a strategic question of whether to continue to build on incremental reforms of specific elements of immigration (e.g., border security, employment verification, temporary workers, or alien children) or whether to comprehensively reform the INA. While it appears that bipartisan as well as bicameral agreement on specific revisions to the INA may be achievable, it is also clear that many think a comprehensive overhaul of the INA is overdue and necessary.

¹ “The Size and Characteristics of the Unauthorized Migrant Population in the U.S.: Estimates Based on the March 2005 Current Population Survey,” by Jeffrey S. Passel, Pew Hispanic Center.

Since the September 11, 2001, terrorist attacks, immigration policy has been folded into the larger issue of homeland security. This linkage was cemented with the passage of the Homeland Security Act of 2002 (P.L. 107-296), which shifted primary responsibility for immigration policy from the former Immigration and Naturalization Service (INS) in the Department of Justice to a set of new agencies in the Department of Homeland Security (DHS). Additionally, immigration provisions figured prominently in the development of and debate on Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458).² In May 2005, the REAL ID Act became law as Division B of the FY2005 Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief (P.L. 109-13). It contains a number of immigration- and identification-document-related provisions intended to improve homeland security. In all, Congress has enacted about 90 laws that included immigration provisions since 2000.

President George W. Bush has stated that comprehensive immigration reform is a top priority of his second term, and his principles of reform include increased border security and enforcement of immigration laws within the interior of the United States, as well as a major overhaul of temporary worker visas, expansion of permanent legal immigration, and revisions to the process of determining whether foreign workers are needed. All of these issues were addressed in legislation passed by the Senate in the 109th Congress, along with provisions for the earned adjustment of unauthorized aliens who had been in the United States at least five years. The House, however, passed a tough immigration enforcement bill, which contained provisions to build border fences, and strengthen provisions on worksite enforcement.

The thorniest of these immigration issues remains the treatment of unauthorized aliens in the United States. Future debates will reflect the divergent views on how to address the over 12 million illegal alien population, as well as what the level of future permanent immigration should be. The policy issue for Congress is whether to reform the nation's legal immigration system and whether border security and interior enforcement provisions — as well as the resources of the immigration agencies charged with the administration and enforcement of immigration laws — are sufficient to implement comprehensive immigration reform.³

Immigration Enforcement

Immigration enforcement encompasses an array of legal tools, policies, and practices to prevent and investigate violations of immigration laws. The spectrum of enforcement issues ranges from visa policy at consular posts abroad and border security along the country's perimeter, to the apprehension, detention, and removal of unauthorized aliens in the interior of the country. Illustrative among these issues likely to arise in the 110th

² CRS Report RL32616, *9/11 Commission: Legislative Action Concerning U.S. Immigration Law and Policy in the 108th Congress*, by Michael John Garcia and Ruth Ellen Wasem.

³ CRS Report RL33319, *Toward More Effective Immigration Policies: Selected Organizational Issues*, by Ruth Ellen Wasem.

Congress are border security, worksite enforcement, alien smuggling, and the role of state and local law enforcement.⁴

Border Security. Border security involves securing the many means by which people and goods enter the country. Operationally, this means controlling the official ports of entry through which legitimate travelers and commerce enter the country, and patrolling the nation's land and maritime borders to interdict illegal entries. In recent years, Congress has enacted a series of provisions aimed at strengthening immigration-related border security. Whether additional changes are needed to further control the border remains a question.⁵

Worksite Enforcement. For two decades it has been unlawful for an employer to knowingly hire, recruit or refer for a fee, or continue to employ an alien who is not authorized to be so employed.⁶ The large and growing number of unauthorized aliens in the United States, the majority of whom are in the labor force, have led many to criticize the adequacy of the current worksite enforcement measures. Efforts to strengthen worksite enforcement, however, are sometimes met by opposition of increased bureaucratic burdens for employers and fears that more stringent penalties may inadvertently foster discrimination against legal workers with foreign appearances.⁷

Alien Smuggling. Many contend that the smuggling of aliens into the United States constitutes a significant risk to national security and public safety. Since smugglers facilitate the illegal entry of persons into the United States, some maintain that terrorists may use existing smuggling routes, methods, and organizations to enter undetected. In addition to generating billions of dollars in revenues for criminal enterprises, alien smuggling can lead to collateral crimes including kidnaping, homicide, high speed flight, identity theft, and the manufacturing and distribution of fraudulent documents. Past efforts to tighten laws on alien smuggling, however, sparked opposition from religious and humanitarian groups who asserted that the forms of relief and assistance that they may provide to aliens might be deemed as the facilitation of alien smuggling.⁸

Enforcement Funding. There are on-going questions about the adequacy of the resources given to the agencies charged with the administration and enforcement of immigration laws. Concerns have been raised that increased funding has been directed to border enforcement in recent years, while interior enforcement resources have not reached sufficient levels. For example, some contend that decisions on which aliens to release from detention and when to release the aliens may be based on availability of detention space, not on the merits of individual cases, and that DHS Immigration and

⁴ CRS Report RL33351, *Immigration Enforcement Within the United States*, coordinated by Alison Siskin. (Hereafter, CRS Report RL33351, *Immigration Enforcement Within the United States*.)

⁵ CRS Report RL33181, *Immigration Related Border Security Legislation in the 109th Congress*, by Blas Nuñez-Neto.

⁶ CRS Report RS22180, *Unauthorized Employment of Aliens: Basics of Employer Sanctions*, by Alison Smith.

⁷ CRS Report RL33351, *Immigration Enforcement Within the United States*.

⁸ CRS Report RL33351, *Immigration Enforcement Within the United States*.

Customs Enforcement (ICE) does not have enough detention space to house all those who should be detained. The debate is also likely to continue over whether DHS has adequate resources to fulfill its border security mission.⁹

State/Local Resources for Interior Enforcement. Notwithstanding an increase in ICE agents, many maintain that the number is still insufficient in the interior of the country. As a result, some recommend that state and local law enforcement be more engaged in enforcing immigration laws. Others question whether state and local law enforcement officers possess adequate authority to enforce all immigration laws — that is, both civil violations (e.g., lack of legal status, which may lead to removal through an administrative system) and criminal punishments (e.g., alien smuggling, which is prosecuted in the courts). Whether state and local law enforcement agencies have sufficient resources and immigration expertise as well as whether state and local funds should be used to enforce federal immigration law are also controversial.¹⁰

Legal Immigration

The challenge inherent in this policy issue is balancing employers' hopes to increase the supply of legally present foreign workers, families' longing to reunite and live together, and a widely-shared wish among the stakeholders to improve the policies governing legal immigration into the country. The scope of this issue includes temporary admissions (e.g., guest workers, foreign students), permanent admissions (e.g. employment-based, family-based), and legalization and status adjustment for aliens not currently eligible for legal status.

Permanent Residence. Four major principles underlie current U.S. policy on permanent immigration: the reunification of families, the admission of immigrants with needed skills, the protection of refugees, and the diversity of admissions by country of origin. The INA specifies a complex set of numerical limits and preference categories that give priorities for permanent immigration reflecting these principles. Legal permanent residents (LPRs) refer to foreign nationals who live lawfully and permanently in the United States. During FY2005, a total of 1.1 million aliens became LPRs in the United States. Of this total, 57.8% entered on the basis of family ties. Other major categories in FY2005 were employment-based LPRs (including spouses and children) at 22.0%, and refugees/asylees adjusting to LPR status at 12.7%.¹¹

A variety of constituencies are advocating a substantial increase in legal immigration and perhaps a significant reallocation between these visa categories. The desire for higher levels of employment-based immigration is complicated by the significant backlogs in family-based immigration due to the sheer volume of aliens eligible to immigrate to the United States. Citizens and LPRs often wait years for the relatives' petitions to be

⁹ CRS Report RL33428, *Homeland Security Department: FY2007 Appropriations*, coordinated by Jennifer Lake and Blas Nunez-Neto.

¹⁰ CRS Report RL32270, *Enforcing Immigration Law: The Role of State and Local Law Enforcement*, by Lisa M. Seghetti, Stephen R. Viña, and Karma Ester.

¹¹ CRS Report RL32235, *U.S. Immigration Policy on Permanent Admissions*, by Ruth Ellen Wasem.

processed and visa numbers to become available. This debate is further complicated by whether to establish avenues that enable unauthorized aliens residing in the United States to become LPRs (i.e., “amnesty” or earned legalization).

Meanwhile, others question whether the United States can accommodate higher levels of immigration and frequently cite the costs borne by local communities faced with increases in educational expenses, emergency medical care, human services, and infrastructure expansion, which are sparked by population growth.

Temporary Admissions. The INA provides for the temporary admission of various categories of foreign nationals, who are known as nonimmigrants. Nonimmigrants are admitted for a temporary period of time and a specific purpose. They include a wide range of visitors, including tourists, foreign students, diplomats, and temporary workers. The main nonimmigrant category for temporary workers is the H visa. Among the visa classifications in the H visa category are the H-1B visa for professional specialty workers, the H-2A visa for agricultural workers, and the H-2B visa for nonagricultural workers. Foreign nationals also may be temporarily admitted to the United States for work- or business-related purposes under other nonimmigrant categories, including the B-1 visa for business visitors, the E visa for treaty traders and investors, and the L-1 visa for intracompany transfers.¹²

Many business people have expressed concern that a scarcity of labor in certain sectors may curtail the pace of economic growth. A leading legislative response to skills mismatches and labor shortages has been to increase the supply of temporary foreign workers. While the demand for more skilled and highly-trained foreign workers has garnered much of the attention in recent years, there has also been pressure to increase unskilled temporary foreign workers, commonly referred to as guest workers. A corollary option is to establish guest worker visas tailored for unauthorized aliens residing in the United States.

Those opposing increases in temporary workers assert that there is no compelling evidence of labor shortages. Opponents maintain that salaries and compensation would be rising if there is a labor shortage and if employers wanted to attract qualified U.S. workers. Some allege that employers prefer guest workers because they are less demanding in terms of wages and working conditions, and that expanding guest worker visas would have a deleterious effect on U.S. workers.

Other Legislative Issues

Refugee, Asylee, and Humanitarian Concerns. The policy question here is how to establish an appropriate balance among the goals of protecting vulnerable and displaced people, maintaining homeland security, and minimizing the abuse of humanitarian policies. Specific topics include refugee admissions and resettlement,

¹² CRS Report RL32044, *Immigration: Policy Considerations Related to Guest Worker Programs*, by Andorra Bruno; CRS Report RL30498, *Immigration: Legislative Issues on Nonimmigrant Professional Specialty (H-1B) Workers*, by Ruth Ellen Wasem; and CRS Report RL31146, *Foreign Students in the United States: Policies and Legislation*, by Chad Haddal.

asylum reform, temporary protected status, unaccompanied alien children, victims of trafficking and torture, and other humanitarian relief from removal.¹³

Alien Rights and Responsibilities. The scope of rights, privileges, benefits, and duties possessed by aliens in the United States is likely to be a significant issue in the 110th Congress. The degree to which such persons should be accorded certain rights and privileges as a result of their presence in the United States, along with the duties owed by such aliens given their legal status, remains the subject of intense debate. Specific policy areas include due process rights, tax liabilities, military service, eligibility for federal assistance, educational opportunities, and pathways to citizenship.

Legislative Action in the 109th Congress¹⁴

In May 2005, the REAL ID Act became law as Division B of P.L. 109-13. It contains a number of provisions intended to improve homeland security. Among these are provisions to make changes to the INA with respect to asylum and other forms of relief from removal; to expand the terrorism-related grounds for alien inadmissibility and deportation; and to set standards for state-issued drivers' licenses and personal identification cards, if such documents are to be accepted for federal purposes.¹⁵

H.R. 4437, the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005, as passed by the House in December 2005, had provisions on border security; the role of state and local law enforcement; employment eligibility verification; and worksite enforcement, smuggling, detention, and other enforcement-related issues. In addition to these provisions, H.R. 4437 contained significant and, in some cases, highly controversial provisions on unlawful presence, voluntary departure and removal, expedited removal, and denying U.S. entry to nationals from uncooperative countries. Efforts by some Members to amend H.R. 4437 to establish new guest worker visas were unsuccessful.

S. 2611, the Comprehensive Immigration Reform Act of 2006, as passed by the Senate in May 2006, combined provisions on enforcement and on unlawful presence; voluntary departure and removal; expedited removal; and denying U.S. entry to nationals from uncooperative countries with provisions on legal temporary admissions, including guest workers and legal permanent admissions. S. 2611 also would have enabled certain groups of unauthorized aliens in the United States to obtain legal permanent residence.

The 109th Congress enacted limited provisions on temporary and permanent employment-based immigration as part of P.L. 109-13 and P.L. 109-364. P.L. 109-295, the FY2007 Department of Homeland Security Appropriations Act, includes border tunnel provisions like those in S. 2611, as well as other enforcement-related provisions. P.L. 109-367 includes border fencing provisions similar to those in H.R. 4437.

¹³ CRS Report RL31269, *Refugee Admissions and Resettlement Policy*, by Andorra Bruno, and CRS Report RL32621, *U.S. Immigration Policy on Asylum Seekers*, by Ruth Ellen Wasem.

¹⁴ CRS Report RL33125, *Immigration Legislation and Issues in the 109th Congress*, coordinated by Andorra Bruno.

¹⁵ CRS Report RL32754, *Immigration: Analysis of the Major Provisions of the REAL ID Act of 2005*, by Michael John Garcia, Margaret Mikyung Lee, and Todd Tatelman.