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# An update on US immigration law and policy

By Greg Siskind

**R**eforming the US immigration system continues to make headlines even though there does not seem to be very much optimism about legislation being implemented in the near future. There is general agreement that the system is broken. An estimated 12 million immigrants are living in the US illegally. Those who have applied to immigrate through various legal channels face backlogs of many years. Temporary work visa numbers for highly skilled workers continue to run out in the middle of the government fiscal year, even when unemployment rates remain high.

US immigration law has generally changed only incrementally since a major reform law was passed in 1986. The 1986 law, the Immigration Reform and Control Act ('IRCA') legalised most of the three million people living illegally in the US at that time and also created the employer enforcement system which is in place today. Employers are required to check the identity and authorisation to work for all their employees in the US. This is done by having employees complete a form called an I-9 and by examining documents that the law mandates employees present. The law also included substantial penalties for employers who knowingly hire unauthorised workers. The IRCA specifically bars states from

imposing their own penalties on employers except in the area of licensing. The 1986 bill was originally supposed to have a guest worker programme that would deal with inevitable future flows of workers to the US, but business and labour could not agree on a plan and Congress decided simply to deal with the question later, something that never happened.

As many predicted, growth in the US economy in the years that followed IRCA's implementation caused a greater demand for foreign workers, but the lack of a guest worker programme and inadequate immigration enforcement led to millions of new workers entering the country illegally. Many workers obtained false documents including millions who work on the basis of social security numbers that are invalid or belong to other people. Some industries are largely dominated by unauthorized workers. For example, the US Department of Labor estimates that 53 per cent of the country's 2.5 million farm workers are illegally in the US.<sup>1</sup>

In 2004, President Bush proposed a comprehensive reform plan that many expected would have substantial support from members of both political parties. The plan had three major components:

- dramatically increase US immigration enforcement efforts;
- put those in the US illegally on a path that would eventually lead to US citizenship; and
- reform the legal immigration system to, among other things, make it easier for employers to hire needed foreign workers and also to increase family immigration quotas to reduce backlogs.

Despite numerous public opinion polls showing substantial support for the plan, several well-organised pressure groups lobbied heavily against the proposal. Protests included inundating members of Congress with so many phone calls and faxes that the Capitol switchboard was forced to shut down. Republicans seemed to react to the pressure more than Democrats and most members of President Bush's party ended up opposing the bill when it was brought up for a vote in 2006 and 2007. The bill narrowly failed on each occasion.

There were several reasons opponents offered to explain why they voted 'no' even if

they believed that the system is broken. Some in the President's party argued that they were not against legalising workers per se, but that they first wanted the President to demonstrate that the US had control over its borders before supporting such a plan. Others said that any legalisation programme amounted to an amnesty and such illegal behaviour should not be rewarded. A few Democrats opposed the measure because the guest worker programme was not deemed adequate to address the demands of organised labour.

In August 2007, shortly after the second failed effort to pass a reform bill, President Bush's Homeland Security Secretary Michael Chertoff and Commerce Secretary Carlos Gutierrez held a joint press conference to announce that in the wake of Congress's failure to pass immigration reform, it would focus mainly on immigration enforcement. Over the last four years, both Presidents Bush and Obama have devoted substantial resources to immigration enforcement and the change has been dramatic.

The number of deportations has increased by 70 per cent, to nearly 400,000 over the past three years. Since President Obama took office, employers have been fined more than \$50,000,000 under IRCA and more than 3,200 companies have had their I-9s audited. Substantial portions of a fence along the US-Mexican border have been completed. The number of illegal entries to the US has declined by half. And an estimated one million unauthorised immigrants have left the country.

Despite the changes, the prospects for legislation to deal with the millions of unauthorised immigrants seem to be worse than ever. Even one of the most sympathetic parts of the comprehensive immigration reform bill, a measure called the DREAM Act that would legalise people who came to the US as children and who have done well in school or served in the military, failed to pass when it was brought before Congress last year. Comprehensive reform has virtually no Republicans supporting it and Democrats lacked the votes to pass it on their own.

So it has caught many by surprise that President Obama has recently given considerable attention to immigration reform. The President did campaign in 2008

on the promise to push through immigration reform in his first year in office. Indeed, his support for immigration reform is credited with him earning substantially more support from Latinos than Democrats have in the past and that support likely helped him win several states.

But the President has largely been on the sidelines in the immigration debate since taking office and has relied on Congress to take the lead. The failure to deliver on the promise of reform in his first year in office has not gone unnoticed. President Obama's support among Latinos has declined by a quarter since the 2008 election and since the number of Latinos in the US has now passed 50,000,000 (they now are the nation's largest minority group), the impact on the loss of those voters could be enormous.

Perhaps due to a fear of losing Latino support in the President's re-election effort in 2012, President Obama has decided to pursue immigration reform in a much more public way. On 10 May 2011, just a few days after he announced the capture of Osama Bin Laden, President Obama delivered a major address on immigration reform.<sup>2</sup> The President largely echoed the same theme of pushing for comprehensive reform, although he left open the possibility of pursuing more modest measures if that is all that is possible.

Obama is also resisting pressure from pro-immigration groups to use his executive authority to address many of the problems. For example, some are calling on the President to enact a moratorium on the deportation of individuals who would eventually qualify for the DREAM Act if enacted. Last year, a memo was prepared for the White House by USCIS outlining options for unilateral action by the White House. The memo created controversy when it was linked to the right wing press. The White House has disavowed the document and has stated on a number of occasions that it lacks the authority to do anything on its own and that only Congress can act. He mentioned that again in his speech this month even after 22 members of Congress sent him a letter stating that he has the authority and needs to act.

Immigration policy analysts are divided over what direction the White House is planning to take. At this point, they are engaged in

a public relations blitz and have organized dozens of 'roundtable' meetings to discuss immigration policy in communities across the country. Beyond that, it is unclear whether the President will engage in any serious negotiations with members of Congress to move immigration legislation forward.

**Notes**

1 [www.nytimes.com/2007/09/04/world/americas/04ihtexport.4.7380436.html](http://www.nytimes.com/2007/09/04/world/americas/04ihtexport.4.7380436.html)

2 <http://youtu.be/-kLHA9m8bOQ>

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