

Getting Immigration Done in 2013

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Takeaways

Can we finally fix our broken immigration system?

With the current bipartisan Senate proposal the answer is YES. It clears two crucial tests: it could pass, and it could work.

- It deals justly with the 11 million already here.
- It gets tough on future lawbreakers.
- It helps the economy.
- It appeals to the vast middle.

In 1986, Congress passed the *Immigration Reform and Control Act* (IRCA)—a bipartisan law that charted a path to citizenship for those here illegally, beefed up border security, and created employer sanctions for those that hired undocumented workers. It was the immigration bill to end all immigration bills, passed with the promise to deal with the millions already here while stopping the thousands coming over the border.¹ And it didn't work.

Since then, two bipartisan efforts were launched and abandoned to repair IRCA and deal with the 11 million undocumented immigrants who currently reside in our country. Six years after the last attempt, the President and Congress are making another try. Can this new effort pass and will it work?

This memo lays out why the Senate bipartisan package passes both tests—enactment and efficacy—and is likely our best hope for reform.

1. It deals justly with the 11 million already here.

Undocumented immigrants currently here would be able to live, work, travel, raise a family, and pursue happiness and opportunity in America without ever having to fear deportation.

2. It gets tough on future lawbreakers. The flow of illegal immigration into America would be substantially and permanently reduced through a variety of long overdue enforcement measures to supplement the efforts already underway through actions by Presidents Bush and Obama.

3. It helps the economy. We would remain a nation of immigrants that not only accepts the “tired,” “poor,” and “huddled masses,” but also makes the United States a global magnet for talent.

4. It appeals to the vast middle. It is a deeply bipartisan package that is tough on the border, fair to taxpayers, and solves the immigration problem in a practical and pragmatic way that addresses the concerns of immigrants and non-immigrants alike.

The odds for success have never been better, but enactment of this or any package is far from a guarantee. It is true that the 2012 election was a wake-up call for Republicans, many of whom now believe they must do something on immigration to stop their electoral hemorrhaging among Latino voters. But legislation must still clear a Republican House protected by gerrymandered, homogenous districts.

It is true that high-profile Republicans are behind a blueprint that includes a path to citizenship. But in the past, high profile Republicans, like President George W. Bush and Senator John McCain, were unable to convince many in their caucus to support reform.

It is true that the President has a powerful new tool—his Organizing for Action grassroots group—to promote reform. But Democrats have a history of overreach on immigration

that has doomed past efforts. And true to form, we observed that the Senate proposal was met warily by immigration reform advocates, many of whom offered tepid support or thinly-veiled criticisms, particularly with regard to the path to citizenship for the 11 million undocumented immigrants who are already here.

The remainder of this memo lays out our reasons for why the Senate proposal deserves support and includes suggestions on how it can be strengthened.

1. It deals justly with the 11 million already here.

The Senate proposal for the 11 million undocumented immigrants is not only practical, it's admirable. It adheres to two values that define us as a nation: it holds children blameless for the transgressions of their parents, but it holds adults accountable for their actions.

For the Kids:

In our country, kids are not blamed for the sins of their parents. Under the Senate framework, those who were brought here illegally as children, through no fault of their own, will be given an expedited path to citizenship if they have stayed in school or served honorably in the military. These children did not choose to break our immigration laws and should not be made to pay for the errant decisions of their parents. In fact, their path to citizenship under the Senate framework could avoid the long wait times and obstacles these deserving young people would have faced even under several recent versions of the DREAM Act. In that way, the Senate plan is DREAM-plus.

For Everyone Else:

Meanwhile, adults who chose to break the law, either by coming or staying here illegally, would be held accountable. Under the Senate plan, they would have to come forward, pay back their debt to society through back taxes and fines, and pass a background check. But in exchange, they would not

face deportation—an action that is as impractical and expensive as it is immoral and vindictive.

Once the country has implemented systemic reforms to ensure we don't find ourselves in this situation again, these immigrants will have the opportunity to petition for lawful permanent resident status and eventually citizenship. Their path will not be fast or easy, but the principles laid out make this path fair and achievable. The Senate plan treats citizenship as the great privilege it is—not a commodity to be handed out but a treasured status that can be earned even by those who violated immigration law.

Further, the Senate proposal would complement these pathways to legality and citizenship with systemic reforms designed to solve our broken infrastructure once and for all. Backlogs would be cleared, and the future flow of immigrants would be managed more effectively and efficiently.

There are very few immigrants who came here illegally who wouldn't jump at the opportunity to take this package today, be free of the fear of deportation, go to sleep at night knowing their children could readily become citizens, and wait for the moment down the road when it will be their turn for citizenship as well. For elected officials, the notion of supporting legislation that holds children blameless and adults accountable is reasonable and easy to communicate with most constituents.

2. It gets tough on future lawbreakers.

If done correctly, the flow of illegal immigration into America would be substantially and permanently reduced through a variety of long overdue enforcement measures that supplement existing efforts.

The Senate framework includes a trigger to make sure these changes occur. This trigger is the hangover from the 1986 IRCA law in which enforcement measures were intentionally slipshod. The Senate proposal sincerely attempts to correct that flaw. In this plan, adult undocumented immigrants

would not be able to become lawful permanent residents until better enforcement benchmarks have been satisfied. This provision is necessary to win the support of both Congressional Republicans but also many moderate Democrats as well.

It is our expectation that this trigger will be drafted in a way that solves the future in-flow problem but does not unduly delay citizenship for adults. To that end, we recommend the following:

Count all enforcement advancements since the failure of the 2006 reform bill when measuring progress on the trigger.

Serious enforcement efforts began in 2006, and a trigger should include this reality in the final bill. For example, post-2005, budgets have increased by 85% for Customs and Border Control and by 87% for Immigration and Customs Enforcement. Federal spending on immigration enforcement is currently higher than spending for all other principle federal law enforcement agencies combined (including the DEA, FBI, Secret Service, U.S. Marshals Service, and the Bureau of Alcohol, Tobacco, Firearms, and Explosives). Felony immigration prosecutions have increased 42.8% under the Obama Administration.² Tying reform to tough enforcement is fair, but the goals should recognize the serious steps to secure the border begun by the Bush Administration and boosted by President Obama.

Require smarter, focused enforcement where we really need it.

Just because the Obama and Bush Administrations have substantially increased enforcement efforts does not mean there is not more to be done. However, what we need now is not an alligator moat on the southern border, but smart enforcement focused where it will be most effective.

Our current entry/exit system has severe limitations—it is estimated that about 40% of the current undocumented immigrant population initially entered the country on a legal

visa and simply failed to leave when that visa expired.³ We need a better system to track when someone enters and leaves the country, and to identify those who overstay their welcome.

Another major hole in the system is employment verification, where our 19th century approach cannot keep up with 21st century technology. The world has advanced rapidly since 1986 when the last major immigration reform law was enacted. We must capitalize on those advancements to implement an effective, nationwide system for verifying a person's eligibility to work—as well as identification documents that are not easily forgeable using simply a desktop computer and standard printer.

The Senate proposal should be fleshed out to require tough-but-smart, technologically advanced enforcement, focused on areas like entry/exit tracking and employment verification, where we know it will do the most good.

Provisional status must be livable.

The Senate trigger does not allow adult undocumented immigrants to apply for lawful permanent residency until visa backlogs have been cleared and enforcement measures have been successfully implemented. This means that most undocumented immigrants would be placed in a provisional legal status for a significant period of time after coming forward, paying fees and fines, and passing a background check.

This provisional status must give holders a sense of permanence, including authorization to work and travel. This status should also protect the spouses and minor children of those who hold it, but it should not allow holders to bring any family in from outside the country. The same restrictions that currently prevent most immigrants without green cards from accessing federal public benefits could also apply to those with provisional status, in order to be fair to taxpayers (current law excludes nearly all immigrants who aren't permanent residents from Medicare, Medicaid, TANF, and

other safety net programs, with the exception of WIC and emergency programs⁴). But we should ensure that these folks can do things like purchase health care through the exchanges and plan for the future. And this status should not expire like the one offered to DREAMers last year⁵ —it must offer a permanent opportunity to come out of the shadows.

Lift the current caps to make the pathway to citizenship achievable.

It is unfair and cruel to promise the undocumented population a pathway to citizenship if it is impossible to achieve. As such, we must ensure that the systemic reforms we are putting into place address visa backlogs in a timely and effective manner, so that when those on provisional status are able to go to the back of the line, they also may eventually reach the front.

Right now, there are applicants in the Philippines who have been waiting in line since 1989 to join their relatives in the United States.⁶ At that rate, many currently undocumented immigrants would never have a chance to even apply for green cards, much less citizenship. The final immigration reform bill needs to take serious steps to address the current backlogs, including raising caps on family- and employment-based immigration as well as relieving per-country quotas. These steps are crucial to making reform both practical and fair. Without including a plan to clear the backlog, offering undocumented immigrants the “chance” to wait in line for lawful permanent resident status could be worse than simply giving them a stable status short of citizenship from which they can carry out their lives without volatility.

3. It helps the economy.

From 1900 to 2000, the U.S. became home to 47.2 million legal immigrants—far more than any other country.⁷ During the same period, the U.S. economy grew by nearly 25-fold, we won two World Wars and a Cold War, and our middle class became the envy of the world.⁸ Immigrants—whether it was Albert Einstein and Andrew Carnegie or millions of factory

workers, farm workers, cooks, and construction workers—were a huge part of America’s 20th century success story. Today, we are an increasingly service, knowledge, and innovation-led economy. Even our manufacturing jobs require a great deal more skill, because we do not make socks anymore—we make finely tuned, high-end products.

To maintain our global dominance and strengthen our economy today, U.S. immigration policy must not only maintain its current levels of legal immigration, but it must also be restructured to attract foreign-born intellectual capital to facilitate innovation and job creation.

America is fortunate. We are the world’s global magnet for talent. We are home to 29 of the world’s top 50 universities.⁹ But we force much of that talent to return to their home country and create economic growth and innovative breakthroughs elsewhere. The Senate proposal finally ensures that those with the skills and education needed to grow our economy can stay here and help us prosper.

The Senate proposal, along with other bipartisan proposals like the *I-Squared Act*, would give America the edge it needs in science, math, engineering, and technology. It would create wealth, jobs, and growth in America that would otherwise happen elsewhere. It would help make the 21st century America’s century, just as immigration helped us lead the way in the last one.

4. It appeals to the vast middle.

In 2006, we conducted a poll in support of immigration reform. We found that 83% supported a path to citizenship. But we also asked whether it would be desirable to deport all 11 million undocumented immigrants back to their home country. Sixty percent said it would, including 51% of Hispanics.¹⁰

This issue is complicated for people. Citizenship is cherished and shouldn’t be given away, but immigrants who came here illegally seem to be decent hardworking people seeking to build a better life for themselves. Laws must be obeyed, but

punishment must not be excessive. Our borders must be secure, but not at the expense of every other thing government must do.

We saw then (and we suspect that it's the same now) that voters were suspicious of both parties on immigration. They felt Democrats would be overly generous to undocumented immigrants and feared that Democratic policymakers put less of a value on what American citizenship actually means. They felt Republicans would be overly harsh on undocumented immigrants and that they had too little compassion for people. They wanted the best attributes of both parties to make up the legislation and saw each side as necessary to temper the worst instincts of the other.

The Senate proposal accomplishes this delicate task. It is generous—but not overly so—to immigrants who came here illegally. It is tough, but not gratuitously harsh, on the border. It is fair to taxpayers by requiring fees and fines for anyone gaining a new legal status. And it is practical—solving a vexing policy problem in a way that is light on ideology and heavy on pragmatism.

It is also the only plan that boasts a chance of passing through a divided Congress with a combination of support from Democratic and Republican lawmakers. Pushing it to the left risks defections from the right; pushing it to the right risks defections from the left.

For Democrats:

In many ways the Senate proposal is even friendlier to Democratic priorities than the 2006 bill, because it includes no touch-back provision that would split up families.

In the Senate proposal, Democrats get everything they most desire: eventual citizenship for undocumented immigrants with an expedited path for children even more ambitious than several recent versions of the DREAM Act. Caps would be raised and backlogs cleared. Most importantly, deportations would cease. The left should recognize this proposal for what it is: the best possible proposal for real, effective reform.

For Republicans:

The 2012 election proved to Republicans that they need to do something on immigration, and this proposal is their best bet: it beefs up enforcement even more than it already has been, secures the immigration system going forward, and ensures that citizenship is not simply given away to those who are undeserving.

Not only is rising Republican star Senator Marco Rubio (R-FL) one of the authors of the Senate proposal, but his plan also received the support of former Republican vice-presidential candidate Paul Ryan (R-WI).¹¹ Conservative talking head Sean Hannity called it “the most thoughtful proposal that I've heard,”¹² and right-wing talk show host Bill O'Reilly called it both “good” and “fair,” declaring “I like your program.”¹³ There are very few members of Congress who are further to the right than Hannity and O'Reilly. And even if there were, those Members must be able to read the writing on the wall: immigration reform is coming. If they want to be included and heard, they need to get behind the bipartisan Senate proposal.

Conclusion

Since the last serious attempt to pass immigration reform collapsed in 2007, more than 2.2 million undocumented immigrants have been deported.¹⁴ Those who support reform should ask themselves this question: do they really think those people would have turned down what the Senate is offering? In exchange for coming forward, passing a background check, and paying fines, they would be allowed to work, travel, and conduct their affairs in the U.S. without fear of deportation. Their children would be given a fast-track to citizenship. And once visa backlogs have been cleared and the border further secured, they could get in line for green cards and could eventually become citizens. Is there even a chance they would say no?

The bipartisan Senate framework is the only path forward, and all those who truly desire progress should focus their

efforts on building support for it publicly, while quibbling about the details privately.

END NOTES

1. United States, Congress, "Immigration Reform and Control Act of 1986 (IRCA)," November 6, 1986. Public Law 99-603. Accessed February 12, 2013. Available at: <http://hdl.loc.gov/loc.uscongress/legislation.99s1200>.
2. Doris Meissner, Donald M. Kerwin, Muzaffar Chrishti, and Claire Bergeron, "Immigration Enforcement in the United States: The Rise of a Formidable Machinery," Report, Migration Policy Institute, January 2013. Accessed February 12, 2013. Available at: <http://www.migrationpolicy.org/pubs/enforcementpillars.pdf>.
3. United States, House of Representatives, Committee on Homeland Security, "Visa Overstays: Can They Be Eliminated?" Hearing, 11th Congress, Second Session, March 25, 2010. Accessed February 12, 2013. Available at: <http://www.hsdl.org/?view&did=717184>.
4. Tanya Broder and Jonathan Blazer, "Overview of Immigrant Eligibility for Federal Programs," National Immigration Law Center, October 2011. Accessed February 12, 2013. Available at: <http://www.nilc.org/overview-immeligfedprograms.html>.
5. United States, Department of Homeland Security, U.S. Citizenship and Immigration Services, "Consideration of Deferred Action for Childhood Arrivals Process," January 18, 2013. Accessed February 12, 2013. Available at: <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=f2ef2f19470f7310VgnVCM100000082ca60aRCD&vgnnextchannel=f2ef2f19470f7310VgnVCM100000082ca60aRCD>.

- 6.** United States, Department of State, Bureau of Consular Affairs, "Visa Bulletin for February 2013," Number 53, Volume IX. Accessed February 12, 2013. Available at: http://www.travel.state.gov/visa/bulletin/bulletin_5856.html.
- 7.** Hazeen Y. Ashby, Lanae Erickson, and Jim Kessler, "Becoming a Magnet for Global Talent," Report, Third Way, May 2011. Accessed February 12, 2013. Available at: <http://www.thirdway.org/publications/390>.
- 8.** Hazeen Y. Ashby, Lanae Erickson, and Jim Kessler, "Becoming a Magnet for Global Talent," Report, Third Way, May 2011. Accessed February 12, 2013. Available at: <http://www.thirdway.org/publications/390>.
- 9.** "The World's Top 100 Universities 2012 – How the Times Higher Education Ranks Them," *The Guardian*, 2012. Accessed February 12, 2013. Available at: <http://www.guardian.co.uk/news/datablog/2012/oct/03/world-top-100-universities-2012>.
- 10.** Third Way's polling was conducted by Benenson Strategy Group and included 1,200 likely voters from swing states in 2006.
- 11.** Daniel Strauss, "Ryan Supports Rubio Immigration Plan," *The Hill*, January 14, 2013. Accessed February 12, 2013. Available at: <http://thehill.com/blogs/blog-briefing-room/news/277035-paul-ryan-supports-rubio-immigration-outline>.
- 12.** "Rubio Defends Immigration Reform Plan," Transcript, Hannity, Fox News, January 28, 2013. Accessed February 12, 2013. Available at: <http://www.foxnews.com/on-air/hannity/2013/01/29/rubio-defends-immigration-reform-plan>.
- 13.** Breanna Edwards, "Bill O'Reilly: Marco Rubio Immigration Plan 'Good,' 'Fair'," *POLITICO*, January 16, 2013. Accessed February 12, 2013. Available at: <http://www.politico.com/story/2013/01/bill-oreilly-marco-rubio-immigration-plan-good-fair-86322.html>.

14. United States, Department of Homeland Security, Immigration and Customs Enforcement, "ICE Total Removals Through August 25, 2012," Table. Accessed February 12, 2013. Available at: <https://www.ice.gov/doclib/about/offices/ero/pdf/ero-removals1.pdf>.