Comprehensive Immigration Reform in the 112th Congress?

In 1986, President Reagan’s Immigration Reform and Control Act authorized temporary then permanent resident status to undocumented immigrants in the US since 1982. The 1986 law also prohibited employers from knowingly hiring undocumented immigrants. Since then, many attempts at more comprehensive reform that included pathways to citizenship for undocumented immigrants have failed to be voted on in the US Senate or House or pass a conference committee. The immigration bills that have made it into law have focused on limiting immigration, securing the borders against undocumented immigrants, verifying the status of immigrants, and facilitating deportation, especially for those who have been convicted of crimes. As a result, many immigration concerns are still to be resolved and it is uncertain what immigration bills will make it through the 112th Congress.

Immigration Enforcement and Border Security Proposals that have become Law or Government Programs

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA 96) was passed and signed by President Clinton. The current chair of the House Judiciary Committee, Rep. Lamar Smith of Texas was the chief architect of this Act. The law stipulates that undocumented immigrants who been unlawfully present in the US for 180 days but less than 365 days must remain outside the US for three years before entering in any legal status unless the person obtains a pardon. If the person has been in the US for 365 days or more, he or she must stay outside the US for ten years unless he or she obtains a pardon. If the person returns to the US without the pardon, the person cannot apply for a waiver for a period of ten years. IIRIRA also contained Section 287(g), a program that permits the Secretary of the Department of Homeland Security to enter into agreements with state and local law enforcement agencies, permitting designated officers to perform immigration law enforcement functions, pursuant to a Memorandum of Agreement. The bill also included a one-year asylum filing deadline; the electronic worker verification system that has evolved into today’s E-Verify; a mandate for an annual increase in the Border Patrol and construction of a “triple-tiered” border fence; and an expanded definition of “aggravated felony,” applying punishment retroactively, and restricting judicial review.

The REAL ID Act of 2005, enacted May 11, 2005, established requirements for state driver's licenses and ID cards that can be accepted by the federal government for “official purposes” such as boarding commercially operated airline flights and entering federal buildings and nuclear power plants. The act also updated and tightened the laws on application for asylum and deportation of aliens for terrorist activity and waived laws that interfere with construction of physical barriers at the borders. By April 2, 2008, all 50 states either applied for extensions of the original May 11, 2008 compliance deadline or received unsolicited extensions. By October 2009, 25 states approved either resolutions or binding legislation not to participate in the program.
Janet Napolitano, the director of the Department of Homeland Security, has slowed implementation. Bills have been introduced into Congress to amend or repeal it.

On August 13, 2010 President Obama signed into law a $600 million border security bill that will pay for 1,000 new Border Patrol agents, add other law enforcement personnel to investigate immigrant violations, and pay for two unmanned aerial vehicle systems.

Also as of October 2010, the Federal Secure Community Program was operating in 686 jurisdictions in 33 states including the 25 counties along the US Southwest Border. Secure Communities is a Department of Homeland Security program designed to identify immigrants in US jails who are deportable under immigration law. When an individual is booked into a jail, his or her fingerprints are checked against the US Visitor and Immigrant Status Indicator Technology Program (US-VISIT), and the Automated Biometric Identification System (IDENT), in addition to the other databases that are generally checked following an arrest. This fingerprint check allows state and local law enforcement and ICE automatically and immediately to search the databases for an individual’s criminal and immigration history. No Memoranda of Agreement (MOAs) with local law-enforcement agencies are required, and no local law-enforcement agents are deputized to enforce immigration laws through Secure Communities. ICE plans to have a Secure Communities presence in every state by 2011, and plans to implement Secure Communities in each of the 3,100 state and local jails across the country by 2013 (US Immigration and Customs Enforcement website; Waslin, 2010).

Recent Attempts at Comprehensive Reform

The Comprehensive Immigration Reform Act (S 2611) was introduced by Sen. Arlen Specter on April 7, 2006. The co-sponsors were Sens. Hagel, Martinez, McCain, Kennedy, Graham, and Brownback. It proposed to increase some security along the southern US border with Mexico, allow long-time undocumented immigrants to gain legal status, and to increase the number of guest workers over and above those already present in the US. It was passed on May 25, 2006, by a vote of 62-36. The parallel House Bill HR 4437 focused on enforcement. Neither bill became law because they failed to pass the conference committee.

In the 110th Congress, the Comprehensive Immigration Reform Act of 2007 (S 1348), backed by President Bush, was introduced by Sen. Harry Reid and cosponsored by Sens. Kennedy, Leahy, Menedez, and Salazar. The bill would have provided legal status and a path to citizenship for the approximately 12 to 20 million illegal immigrants currently residing in the US. It also increased border enforcement by funding 300 miles of vehicle barriers, 105 camera and radar towers, and 20,000 more Border Patrol agents, while simultaneously restructuring visa criteria around high-skilled workers (a point-based merit system). It did not receive the 60 votes necessary to make it to the Senate floor for a vote.

AgJobs Act of 2007 (HR 371; S 1639) aimed to achieve a stable and legal agricultural work force through a two-pronged approach that included: (1) a two-step earned adjustment program under which undocumented agricultural workers already in the US may apply for temporary resident immigration status and then earn permanent resident immigration status by completing three to five years of additional employment and meeting other requirements; and (2) reform of
the H-2A agricultural temporary work program to create a streamlined, secure, and fair visa system that accommodates the needs of workers and employers. The Act would have required immigrants who take advantage of this program to be in their home country when they apply for a green card. Five years after receiving a green card the immigrants could begin the process of becoming a US citizen. The bill would have increased border enforcement, including increasing the number of border patrol agents by 20,000 and adding another 370 miles of fencing. The bill also contained the DREAM Act, a bill that has been introduced unsuccessfully several times in the House and Senate, that would provide a path to citizenship for illegal immigrants brought into the country as minors who either go to college or serve in the US military. This version of the DREAM Act would have also restored states rights in determining eligibility for in-state tuition. The AgJobs Act passed the House and was not voted on in the Senate.

Two proposals calling for comprehensive immigration reform were before the 111th Congress: the Comprehensive Immigration Reform for America’s Security and Prosperity Act of 2009 sponsored by Rep. Ortiz (HR 4321), and the Real Enforcement with Practical Answers for Immigration Reform (REPAIR) proposed by Sens. Schumer, Reid, Menendez, Feinstein, and Leahy. Both HR 4321 and REPAIR called for reducing the flow of undocumented immigrants through border enforcement. Yet, both also included providing ways to promote entrance and paths to residency for skilled workers, paths to citizenship for undocumented immigrants, and family reunification. REPAIR would establish a biometric Social Security card, while HR 4321 prohibited the creation of a national identity card. Both HR 4321 and REPAIR called for enforcing employers to comply with the worker verification system. HR 4321 provided for the protection of immigrant workers who have been retaliated against by employers. Both required detention standards. HR 4321 called for repeal of the 287(g) program. HR 4321 and REPAIR would have barred states and local governments from enacting their own immigration laws. Ortiz’s bill and the REPAIR proposal were not voted on.

A modified version of The DREAM Act was proposed again in the post election 111th Congress. The new version of the DREAM Act included numerous changes to address concerns raised about the bill. Among other things, S 3992:

1. Lowered the age cap for eligibility for the DREAM Act to 29 on the date of enactment.
2. Delayed legal immigrant status to applicants for at least 2 years. Under S 3992, individuals could obtain “conditional nonimmigrant” status if they proved that they meet the following requirements:
   a. Must have come to the US as a child (15 or under);
   b. Have graduated from a US High School (or received a GED from a U.S. institution);
   c. Are a long-term resident (at least 5 years);
   d. Have been a person of “good moral character,” as determined by the Department of Homeland Security, from the date the individual initially entered the US (previous versions of the DREAM Act only required an individual to be a person of good moral character from the date of the bill’s enactment);
   e. Submit biometric information;
   f. Undergo security and law-enforcement background checks;
   g. Undergo a medical examination; and
h. Register for the Selective Service.

3. Further limited eligibility for conditional nonimmigrant status by specifically excluding those who:
   a. Have committed one felony or three misdemeanors;
   b. Are likely to become a public charge;
   c. Have engaged in voter fraud or unlawful voting;
   d. Have committed marriage fraud;
   e. Have abused a student visa;
   f. Have engaged in persecution; or
   g. Pose a public health risk.

4. The immigrant must pay back taxes and demonstrate the ability to read, write, and speak English and demonstrate knowledge and understanding of the fundamentals of the history, principles, and form of government of the US.

5. Further limited "chain migration." DREAM Act individuals would have very limited ability to sponsor family members for US citizenship.

6. Established a one-year application deadline.

7. Required those applying for the DREAM Act to show that they are likely to qualify in order to receive a stay of deportation while their application is pending.

8. Required the Department of Homeland Security to provide information from an individual’s DREAM Act application to any federal, state, tribal, or local law enforcement agency, or intelligence or national security agency in any criminal investigation or prosecution or for homeland security or national security purposes.

9. Placed the burden of proof on DREAM Act applicants. Individuals would be required to demonstrate eligibility for the DREAM Act by a preponderance of the evidence.

Additionally, individuals would continue to be excluded if they have received a final order of deportation, have engaged in criminal activity as defined by the Immigration and Nationality Act, or present a national security or terrorist threat. The House of Representatives passed the DREAM Act in December 2010 (HR 5281), but it failed in the Senate by a vote of 55 yays - 41 nays; 60 votes are needed to overcome a stated intent to filibuster and bring a bill to the floor.

**States’ Responses**

Many states are proceeding with their own immigration reform, focused primarily on border security and enforcing immigration laws, with some pushing to relax stringent controls. Forty-six state legislatures and the District of Columbia enacted 208 laws and adopted 138 resolutions that dealt with immigration during their 2010 sessions.

The Governor of Arizona signed on April 23, 2010, a law that requires police officers “when practicable” to detain people they reasonably suspect are in the country without authorization and to verify their status with federal officials, unless doing so would hinder an investigation or emergency medical treatment. It is a misdemeanor not to carry immigration papers; and people can sue local government or agencies if they believe federal or state immigration law is not being enforced. The US Justice Department filed a lawsuit in July 2010, arguing that the Arizona immigration law stepped into federal jurisdiction. A federal judge issued a preliminary injunction against the most controversial portions of the law. Illinois, Michigan, Minnesota, South Carolina,
Pennsylvania, and Rhode Island considered but did not enact bills similar to Arizona’s (NCSL, 2011, January 13).

Moments after taking office, Florida Republican Governor Rick Scott signed Executive Order 11-02, requiring all state agencies to use E-Verify to determine the employment eligibility of state employees, contractors, and subcontractors (FAIR Press Release, 2011, January 10).

Newly-elected Rhode Island Governor Lincoln Chafee rescinded previous governor Donald Carieri’s executive order which had been used to crack down on illegal immigration. The order required state government offices and vendors to use E-Verify in order to ensure the legal status of newly-hired employees. It also directed state police to enter into a 287(g) agreement with federal immigration authorities to assist Immigration and Customs Enforcement (ICE) in their enforcement of immigration laws (FAIR Press Release, 2011, January 10).

Utah State Senator Luz Robles has introduced a bill that would give work permits to illegal immigrants who pass background checks and take English and civics classes

Legislators from Arizona, Georgia, Oklahoma, Pennsylvania, and South Carolina have started a campaign to end the automatic granting of American citizenship to children born in the United States of illegal immigrants. The legislators are members of a 40-state coalition known as State Legislators for Legal Immigration (SLLI). With the aid of constitutional scholar Kris Kobach (also Kansas’ Secretary of State), former Dean of Chapman Law School John Eastman and the Immigration Reform Law Institute, SLLI has written two bills for introduction in multiple legislatures that SLLI hopes will spur the federal government into ending the practice of granting birthright citizenship to children born to undocumented immigrants. The proposed legislation includes both a bill and a state compact. According to Kobach, the bill does not amend the US Constitution, usurp Congress, or change the legal rights of any individual. Rather, the bill serves to restore the concept of state citizenship and asserts states’ authority to establish requirements for state citizenship. Each state would have a separate state citizenship that would exclude babies born in the state with two illegal parents. A second measure was a compact between states, in which they would agree to issue distinctive birth certificates to babies whose parents could not show legal immigration status. The state bills would also deny citizenship to newborn children of many legal immigrants who live in the United States on temporary visas. The right to US citizenship for everyone born on American soil is described in the 14th Amendment. The state legislators argue that one phrase in the amendment -- which guarantees citizenship to everyone born or naturalized in this country "and subject to the jurisdiction thereof" -- signals that it was not intended to apply to children of immigrants who do not have lawful status (Lacey, 2011, January 5; Preston, 2011, January 6; FAIR Press Release, 2011, January 10).

Will the 112th Congress Consider Comprehensive Reform?

The House Judiciary Committee’s jurisdiction includes immigration policy. The new chair Rep. Lamer Smith (the architect of IIRIRA 96) has announced that his committee will begin its work on immigration by tackling the issue of worksite enforcement and support for the use and expansion of E-Verify. He has also asked Reps. Elton Gallegly (R-CA) and Steve King (R-IA) to serve as the chair and vice-chair, respectively, of the House Judiciary’s Subcommittee on
Immigration Policy and Enforcement (www.judiciary.house.gov). Rep. King has already followed through on his vow to introduce a bill to end birthright citizenship.

Of the more than 100 freshman Republicans in the 112th Congress, “39% have already declared their intention to end the 14th Amendment’s guarantee of birthright citizenship.” Almost a third wants to reduce legal immigration (Center for American Progress, 2010, Nov. 3). Rep. Louis Barletta (R. Pennsylvania), as Mayor of Hazleton, pushed through a local ordinance in 2006 to deny business permits to companies that employ undocumented immigrants and to fine landlords who rent to them. The law was later struck down as unconstitutional. Rep. Rand Paul (R. Kentucky) said on his campaign website that he opposes “amnesty” and favors building “an electronic fence” along the Southwest border. He also favors ending birthright citizenship. Sen. Marco Rubio (R. Florida) has said that he believes “that our nation’s immigration policy should consist of border enforcement, securing the border, fixing the visa process, and ensuring that no law extends amnesty to illegal immigrants” (Iowa Immigration Education Coalition, 2010, November 9).

Within the first few days of the 112th Congress a number of immigration enforcement bills have already been introduced:

- **HR 140 by Rep. Steve King--**Bill aimed at ending automatic citizenship for children born to illegal aliens (birthright citizenship). Specifically, the bill amends Section 301 of the Immigration and Nationality Act (INA) to grant birthright citizenship only to children born to at least one parent who is a U.S. citizen or legal permanent resident.
- **HR 45 by Rep. Darrell Issa (R-CA) –** Bill would amend the INA to impose mandatory sentencing ranges with respect to aliens who reenter the US after having been removed.
- **HR 98 by Rep. David Dreier (R-CA) –** Bill would amend the INA to enforce restrictions on employment in the US of illegal aliens through the use of improved Social Security cards and an Employment Eligibility Database.
- **HR 100 by Rep. Marsha Blackburn (R-TN) –** Bill would provide for enhanced Federal, State, and local assistance in the enforcement of the immigration laws and amend the INA to authorize appropriations to carry out the State Criminal Alien Assistance Program (SCAAP).
- **HR 152 by Rep. Ted Poe (R-TX) –** Bill would authorize the National Guard to provide support to US Customs and Border Patrol. (FAIR Press Release, 2011, January 10).

FAIR, a conservative advocacy organization, recently offered its agenda for the 112th Congress. It emphasizes increased enforcement of immigration laws and reducing the number of legal immigrants:

- Renew and expand workplace enforcement operations, which includes permanently authorize and make mandatory the E-Verify program, supporting ICE worksite enforcement, and increasing and consistently applying civil and criminal penalties against employees of illegal aliens.
- Ensure identification documents are secure.
- Support state and local enforcement efforts.
• Reform the federal agencies dealing with immigration so that they have sufficient permission and resources to share information.
• Oppose efforts to give benefits to illegal aliens.
• Secure the borders and ports of entry.
• Implement a secure and efficient admission and removal process.
• Cut the number of legal permanent residents, which includes eliminating birthright citizenship, repealing the visa lottery, preferring skilled immigrant workers over the unskilled, and opposing any efforts to reauthorize INA 245(i) (allowing immigrants who are eligible for permanent residence based on family relationship or job offer to become lawful permanent residents without leaving the US).
• Stop legal immigration fraud such as having stricter standards for admission of guest workers and eliminating asylum and religious worker visas.
• Protect the American Worker, which includes giving US workers preference during hiring and lay-offs and opposing efforts to expand guest worker programs. (2011, January)

The Center for American Progress, a liberal advocacy organization, recommends that the Obama administration would better achieve its commitment to immigration reform by advancing legislative reforms that include addressing both enforcement concerns and the systemic influences on undocumented immigration:

• Collaborate with the Senate to advance targeted legislative reforms: offer a reform package that combines expanding employment verification and border security with a program that requires undocumented workers to earn legal status.
• Reassert federal primacy over immigration policy: work with the states to address their concerns about undocumented immigrants while reclaiming the federal government’s authority to make immigration policy.
• Make immigration enforcement smarter and more targeted: the DHS should prepare an audit of current enforcement strategies; do a review of the Secure Communities program to ascertain whether it is targeting individuals who have committed serious crimes or is being used as a pretext for profiling; and delineate priorities for civil detention in order to offer alternatives to jail for noncriminal immigrants to ensure appearance at deportation hearings and compliance with the removal process. (Fitz & Angela, 2011)

Even with this push for tougher immigration laws and more secure borders, any legislation faces the 60 vote requirement in the Senate in order to make it to the floor for a vote. Some of the enforcement measures may suffer the same fate as the comprehensive reform proposals during the last Congress. All which means, that we may see some enforcement laws but another Congress without a systemic and comprehensive approach to immigration.
References

Center for American Progress (2010, Nov, 3). Meet the 2010 GOP Freshman Class. Washington, DC.
Washington, DC: Center for American Progress.
Iowa Immigration Education Coalition (2010, November 9). Update: The results of the elections and
immigration in the 112th Congress. Des Moines, Iowa.
Times, A1.
National Conference of State Legislatures (2011, January 13). Broken federal immigration policy
leaves states in a lurch. Washington, DC.
Preston, J. (2011, January 6). State lawmakers outline plans to end birthright citizenship, drawing