BRIEFING

National Interests and Common Ground in the US Immigration Debate:
Legal Immigration Reform v. Mass Deportation and the Wall

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Purpose

Flesh out and compare two visions of immigration reform

- Vision of an immigration system that serves national interests, prioritizes reform of US legal immigration system, and permanently reduces US undocumented population.

- Vision of enforcement-only reform characterized by mass deportation and border wall.
Interests and Values that Underlie US Immigration Law

• Families are the fundamental building block of society and should be preserved.
• Admissions policies based on national origin, race, or privilege offend US civic values.
• Fairness and process should characterize admission and removal decisions.
• Providing haven to refugees reflects US history, tradition, and its core commitment to liberty, freedom, and dignity.
• Immigrants embody self-sufficiency, hard work, and drive to succeed, and further the nation’s economic competitiveness.
• US residents deserve access to “the benefits of a free and open society.”
• A system characterized by “fair, orderly, and secure” migration upholds the rule of law.
• Unauthorized migration challenges US sovereignty, threatens US security, and devalues citizenship.
• Criminals and security threats flout US ideals.
Characteristics of a Reformed System

• Improved Migration Governance: None of the interests served by immigration policies — family, economic, or humanitarian — can be achieved *only* by these policies.

• Empowered communities that fully participate in their new communities and contribute to poverty reduction, disaster relief, economic development, reconciliation initiatives, and national security in their communities of origin.

• A system that distinguishes between unauthorized migration and refugee and humanitarian flows.

• Cooperation from other states seek to create win-win policies.
Figure 1. Percent of Foreign-born in the Population Aged 18 to 64: 1990 to 2050

Need for Coherent Laws and Policies and Removal of Barriers to Legal Status

The United States regularly creates immigration laws and procedures that predictably lead to the need for more visas, but makes no provision for meeting this need.

The Immigration Reform and Control Act, for example, did not provide for derivative status for the family members of beneficiaries.

4.26 million persons had been determined by USCIS to have a close family relationship that qualified them for a visa, but most languish in backlogs.

Need to remove barriers to “legalizing” status like the 3 and 10 year bars, and limits on in-country adjustment of status.

One-year filing rule bars a high percentage of asylum claim.
Need for Flexible, Evidence-Based Immigration Policies

The US needs an immigration system that can adjust its admission priorities and numbers, relying on current data and research, in order to meet its underlying goals.

In recent years, MPI, Ray Marshall, and others have proposed ways to align US immigration policies more closely with US labor and economic needs.

Yet, as it stands ....
US Lacks a Formal, Independent Body on which Congress and the Executive Can Rely to:

• identify the nation’s evolving labor, family, or humanitarian needs that might be met through immigration
• identify shortages in skills and occupations necessary to promote that nation’s economic competitiveness;
• assess the labor market contributions and trajectories of those who enter via different categories of admission, including family-based visas;
• propose adjustments in legal admission levels and categories to reflect the nation’s needs, interests, and fluctuations in its economy;
• research the views of immigrants on US immigration policies in order to strengthen the legal immigration system and better understand and address noncompliance with the law (Ryo 2017)
• champion access by researchers to relevant datasets in order to build an exhaustive evidence base on which Congress and the executive can make policy judgments in this area.
Reform Should also Include Evidence-Based Humanitarian Admissions Policies

- More robust refugee and humanitarian program would provide greater flexibility and more options for admitting refugees and humanitarian migrants who are at great risk.

- Many states and international actors produce annual reports, indices, state performance rankings and data on development, human rights, the rule of law, civil rights, business friendliness, corruption, transparency, human capital, state fragility, poverty, and religious liberty. However, these credible reports do not inform US admission policies. They should.

- The US should rely on this information and available data to target development and diplomatic interventions; to anticipate and plan for large-scale humanitarian migration; and, to establish refugee admission and humanitarian parole priorities.
Figure 5. Annual Undocumented Population Change: 1990 to 2014

**Table 1. Summary of Changes to the Registry Provision**

<table>
<thead>
<tr>
<th>Date of change</th>
<th>Eligible if entered before Jan. 1</th>
<th>Years between date enacted and year eligible</th>
</tr>
</thead>
<tbody>
<tr>
<td>1929</td>
<td>1921</td>
<td>8 years</td>
</tr>
<tr>
<td>1940</td>
<td>1924</td>
<td>16 years</td>
</tr>
<tr>
<td>1958</td>
<td>1940</td>
<td>18 years</td>
</tr>
<tr>
<td>1965</td>
<td>1948</td>
<td>17 years</td>
</tr>
<tr>
<td>1986</td>
<td>1972</td>
<td>14 years</td>
</tr>
<tr>
<td>Currently</td>
<td>1972</td>
<td>45 years</td>
</tr>
</tbody>
</table>

Average years between date changes: 14.5

Average years above: 14.5

*Source: USCIS.*

Figure 6. Percent of the Undocumented Population that were Overstays: 1980 to 2015

<table>
<thead>
<tr>
<th>Year</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>1980</td>
<td>48%</td>
</tr>
<tr>
<td>1990</td>
<td>38%</td>
</tr>
<tr>
<td>2000</td>
<td>41%</td>
</tr>
<tr>
<td>2010</td>
<td>41%</td>
</tr>
<tr>
<td>2015</td>
<td>42%</td>
</tr>
</tbody>
</table>

Overstays have exceeded EWIs every year since 2007, and 600,000 more overstays than EWIs have arrived since 2007.

Figure 1. Total undocumented population in 2014, by year and mode of entry (rounded to 5,000s)

Main Policy Recommendations: Reform the Legal Immigration System

Establish a coherent, flexible, fact-based legal immigration system that closely aligns with US interests and values.

Without legal immigration reform, the US immigration system cannot advance any of the compelling national interests that it is intended to serve.

As the Council on Foreign Relations’ Independent Task Force on US Immigration Policy concluded in 2009:

...[G]etting legal immigration right is the most critical immigration policy challenge facing the administration and Congress. Although not enough on its own, the most effective way to combat illegal immigration is to have an immigration policy that provides adequate and timely means for the United States to admit legal immigrants.
Legalize the Current Undocumented Population

The transitional nature of immigration status and the high percentage of undocumented residents with long tenure and strong equitable ties to the United States argues for a legalization program. The undocumented include:

• A high percentage of the 4.26 million in family-based visa backlogs
• Perhaps 15-20 percent who may be eligible for an immigration benefit or relief, but do not know it or cannot afford to pursue it
• A large number who will ultimately fall out of this status: between 1982 and 2012, 6.5 million left voluntarily, were removed, or died
• 1.9 million with 20 years or more of US residency and 1.6 million with 15 to 19 years of US residency
• 3.9 million parents of US citizens or LPRs and 2.5 million undocumented residents brought to the United States at age 15 or under, and
• Roughly one million who are counted as undocumented in standard estimates, but whose status is provisional, including persons granted TPS, asylum seekers, parolees, and others
Will a Legalization Program Invariably Lead to Another Large Undocumented Population?

Not with a reformed, legal immigration system and continued robust enforcement policies.

IRCA is often cited as a case study in how legalization programs invariably spur further illegal migration. However, its shortcomings need not be replicated in a future program.

IRCA failed to prevent the growth in the undocumented population for five principal reasons:

- It did not reform the US legal immigration system.
- It did not provide “derivative” status to the close family members of general legalization or SAW beneficiaries: the resulting glut in family-based petitions from IRCA beneficiaries led to the current multiyear backlogs in the family-based immigration system.
- It did not legalize enough undocumented persons, paving the way for the subsequent growth of this population.
- The SAW program attempted to address the labor needs of the perishable agriculture industry: virtually all SAW-legalized workers had effectively “aged out” of perishable agriculture work and were replaced by undocumented workers.
- INS did not aggressively enforce IRCA’s employer verification and sanctions program, and these programs were easily circumvented by the widespread use of fraudulent documents.
How to Keep the US Undocumented Population Low

• Create kind of legal immigration system set forth in this paper — coherent, flexible, fact-based, and closely aligned to US interests.
• Remove barriers to legal status like the three- and 10-year bars and the limited eligibility of the 245(i) program, and one-year asylum filing bar.
• Offer support for legal screening of low-income undocumented immigrants, combined with reduced application fees and a concerted public education campaign.
• Advance the registry cutoff date. Nearly two-thirds of the US undocumented population have lived in the United States for at least 10 years, including 5 million for at least 15 years.
• Move the registry date forward at regular intervals to ensure that the long-term undocumented population never again approximates its current size.
• Allow DHS trial attorneys to settle cases in ways short of removal, and allow judges to assess and act on equities in case.
• Allow the concept of *mens rea*, which speaks to the need for criminal knowledge and intent, to be invoked as a defense to deportation, particularly in children’s cases.
Mass Deportations Would Impoverish US Families and Create Immense Social Costs

Major findings include:

• There were 3.3 million mixed-status households in the United States in 2014.
• 6.6 million US-born citizens share 3 million households with undocumented residents (mostly their parents). Of these US-born citizens, 5.7 million are children (under age 18).
• 2.9 million undocumented residents were 14 years old or younger when they were brought to the United States.
• Three-quarters of a million undocumented residents are self-employed, having created their own jobs, and in the process creating jobs for many others.
• A total of 1.3 million, or 13 percent of the undocumented over age 18, have college degrees.
• Of those with college degrees, two thirds, or 855,000, have degrees in four fields: engineering, business, communications, and social sciences.
• Six million undocumented residents, or 55 percent of the total, speak English well, very well, or only English.
• The unemployment rate for the undocumented was 6.6 percent, the same as the national rate in January 2014.
• Seventy-three percent had incomes at or above the poverty level.
• Sixty-two percent have lived in the United States for 10 years or more.
• Their median household income was $41,000, about $12,700 lower than the national figure of $53,700 in 2014 (US
Mass Deportations Would Impoverish US Families and Create Immense Social Costs

Major consequences include:

• Removing undocumented residents from mixed-status households would reduce median household income from $41,300 to $22,000, a drop of $19,300, or 47 percent, which would plunge millions of US families into poverty.

• If just one-third of the US-born children of undocumented residents remained in the United States following a mass deportation program, which is a very low estimate, the cost of raising those children through their minority would total $118 billion.

• The nation’s housing market would be jeopardized because a high percentage of the 2.4 million mortgages held by households with undocumented immigrants would be in peril.

• Gross domestic product (GDP) would be reduced by 1.4 percent in the first year, and cumulative GDP would be reduced by $4.7 trillion over 10 years.*

The 2,000 Mile Wall in Search of a Purpose: Since 2007 Visa Overstays have Outnumbered Undocumented Border Crossers by a Half Million

Major findings include:

• Overstays accounted for about 66 percent of those who joined the undocumented population in 2014.
• Overstays have exceeded EWIs every year since 2007, and 600,000 more overstays than EWIs have arrived since 2007.
• In 2014, about 4.5 million US residents, or 42 percent of the total undocumented population, were overstays.
• Mexico is the leading country for both overstays and EWIs.
• California has the largest number of overstays, followed by New York, Texas, and Florida.
• Two states had 47 percent of the 6.4 million EWIs in 2014: California and Texas.
• The percentage of overstays varies widely by state.