

THE REGIONAL MIGRATION STUDY GROUP

# US IMMIGRATION POLICY SINCE 9/11: Understanding the Stalemate over Comprehensive Immigration Reform

By Marc R. Rosenblum



Woodrow Wilson  
International  
Center  
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MIGRATION POLICY INSTITUTE

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August 2011



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## Executive Summary

The election of George W. Bush in 2000 seemed to mark a turning point in US immigration policy. Thirty-five years after the last major changes to the US immigration system, and two decades into an increasingly assertive, but mostly ineffective, immigration enforcement policy, the Republican president seemed to see immigration as offering important benefits to the US economy. He called for a new and large-scale temporary worker program, saw the growing Hispanic population as important swing voters, and met five times in nine months with Mexico's newly elected president, Vicente Fox.

But migration negotiations with Mexico collapsed following the terrorist attacks against the United States in September 2001. In the post-9/11 period, Congress passed a series of tough measures to tighten border security and facilitate data collection and information sharing on suspected terrorists, and broadened the government's power to detain and deport immigrants.

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### *Given public support, why have two successive presidents failed to make progress on this issue?*

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Both Presidents Bush and Barack Obama have supported broader immigration reforms. Yet, while Congress took up “comprehensive immigration reform” (CIR) bills (i.e., legislation combining enforcement, legalization, and changes to the visa system) in 2006 and 2007, it did not deliver a bill for the president's signature. Legislative action in 2009-10 was limited to debate on a legalization proposal focusing on unauthorized youth (the DREAM Act) — a proposal that was defeated on a procedural vote in the Senate.

Opinion polls routinely find that the majority of Americans favor a combination of tough enforcement and “earned legalization” — the core components of CIR — in addressing the unauthorized immigrant population. Meanwhile, powerful interest groups tied to both political parties have pushed for legalization and new temporary visa programs. Given public support, why have two successive presidents failed to make progress on this issue? And how is the debate over immigration reform likely to evolve in 2011-12?

This report reviews the recent history of US immigration legislation, including new enforcement mandates passed immediately after 9/11 and unsuccessful efforts to pass CIR bills during the 109th and 110th Congresses. This history, together with asymmetries in the political process that favor enforcement-oriented responses, stack the deck against legalization and visa reform. Any possibility of success was further hurt by the timing of the reform debate with respect to the national electoral calendar in 2006-07 and the economic downturn beginning in 2008.

On a more fundamental level, the short-term obstacles to CIR reflect deep political divisions within the pro-CIR coalition on the one hand and the power of grassroots constituencies opposed to reform on the other — though the growing influence of Latino voters is an important countertrend. The report concludes by describing these challenges, and by identifying questions central to the future of the US immigration debate.



## I. US Immigration Policy in 2001: Demand for Reform, and the Whole Enchilada Framework

The US system seemed poised for a major immigration reform in 2001.<sup>1</sup> Congress and the Clinton administration had passed four laws between 1997 and 2000 granting certain groups relief from some of the most restrictive provisions of the 1996 *Illegal Immigration Reform and Immigrant Responsibility Act* (IIRIRA) and permitting some unauthorized immigrants to legalize their status.<sup>2</sup>

An additional agreement was reached in December 2000 when Congress convened after the election (in a so-called lame-duck session). Key legislators from both parties agreed to the *Agricultural Job Opportunity Benefits and Security Act* (AgJOBS) compromise, which combined legalization for unauthorized agricultural workers, favored by labor unions, with reforms to simplify H-2A agricultural guest-worker recruitment procedures, favored by employers. But the deal fell apart at the last minute, in part because Republicans preferred to wait and see the legislation enacted under the incoming Bush administration.

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### *The US system seemed poised for a major immigration reform in 2001.*

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Congress then considered three different legalization proposals in the first nine months of 2001:

- By wide margins, both chambers approved short-term extensions of section 245(i) of the *Immigration and Nationality Act* (INA), a provision that allowed unauthorized immigrants who were otherwise eligible for green cards to adjust to lawful permanent residency without leaving the country.<sup>3</sup>
- Bipartisan groups in both chambers introduced versions of the *Development, Relief, and Education for Alien Minors* (DREAM) *Act*, which would legalize certain unauthorized youth who had entered the United States as children and had graduated high school and attended college.<sup>4</sup> The Senate Judiciary Committee reported favorably on the bill in June, and it was placed on the Senate calendar.
- A pair of AgJOBS bills were introduced, with support on both sides of the aisle, though the parties used hearings in April and June to make the case for their competing approaches.<sup>5</sup>

1 For an overview of US immigration policy from 1965-2000, see Kate Brick and Marc R. Rosenblum, *US Immigration Policy and Mexican/Central American Migration Flows: Then and Now* (Washington, DC: Migration Policy Institute, 2011).

2 The *Nicaraguan Adjustment and Central American Relief Act of 1997*, Pub. L. No. 100-105 (November 19, 1997), and the *Haitian Refugee Immigration Fairness Act*, Pub. L. No. 105-277 (October 21, 1998), reversed restrictions on asylum application rules included in the *Illegal Immigration Reform and Immigrant Responsibility Act* (IIRIRA) of 1996, Pub. L. No. 104-208 (September 30, 1996), for some Central Americans and Haitians, making these immigrants eligible for lawful permanent residency (green cards). And the fiscal year (FY) 1998 *Commerce, Justice and State Appropriations Act*, Pub. L. No. 105-119 (November 26, 1997), and the *Legal Immigration Family Equity* (LIFE) *Act of 2000*, Pub. L. No. 106-553 (December 21, 2000), both included extensions to Section 245(i) of the *Immigration and Nationality Act*, a provision allowing unauthorized immigrants in the United States who are eligible for green cards to receive them without leaving the country or being subject to IIRIRA's bars on the readmission of unauthorized immigrants.

3 The House passed a four-month extension of Section 245(i) by a vote of 336-43 in May, and the Senate approved a one-year extension by unanimous consent in September.

4 HR 1918 was sponsored by Rep. Chris Cannon (R-UT) in the House with 62 bipartisan cosponsors, and S. 1291 was sponsored by Sen. Orrin Hatch (R-UT) in the Senate with 18 bipartisan cosponsors. See HR 1918, *Student Adjustment Act of 2001*, 107th Cong., 1<sup>st</sup> sess.; and S. 1291, *Development, Relief, and Education for Alien Minors Act*, 107th Cong., 2<sup>nd</sup> sess.

5 The Republican-backed *Agricultural Job Opportunity Benefits and Security* (AgJOBS) *Act of 2001* (S. 1161) was introduced by Sen. Larry Craig (R-ID) on July 10, 2001, and the Democratic *H-2A Reform and Agricultural Worker Adjustment Act* (HR 2736) was introduced during the 107<sup>th</sup> Congress by Rep. Howard Berman (D-CA) on August 2, 2001.



President Bush strongly supported these reform efforts. As a former border-state governor with a business background, he had promised during his campaign to speed immigration processing for immigrant families and employers; he embraced Latino family values and argued that “immigration is not a problem to be solved; it is the sign of a successful nation.”<sup>6</sup>

Bush’s interest in migration reform was fueled by Mexican President Vicente Fox, another former border-state governor, who was sworn in a month before Bush as Mexico’s first democratically elected leader from an opposition party. Fox had campaigned to be the president of “all Mexicans,” and saw the improvement of conditions of Mexicans in the United States as a top priority in the Mexico-US relationship. With President Bush viewing better US-Mexican relations as his “signature foreign policy legacy,”<sup>7</sup> the two presidents met five times during the first nine months of 2001, and it was widely observed that US-Mexican relations had never been better. Some analysts described this evolution as an “absolutely historic transition from a hostile relationship to a cooperative relationship,” and predicted “more and more a kind of merged country on the border.”<sup>8</sup>

The stage for these conversations had been set, almost by coincidence, through the impaneling of a blue ribbon binational task force on Mexico-US migration chaired by Thomas F. “Mack” McLarty, President Clinton’s first chief of staff and later his special envoy for Latin America; Catholic Bishop Nicholas DiMarzio; and Andrés Rozental, a former Mexican undersecretary of foreign affairs and longtime senior diplomat. The Carnegie Endowment for International Peace and the Instituto Tecnológico Autónomo de México were its conveners.

The group met throughout 2000 and released its report, *Mexico-US Migration: A Shared Responsibility*, in early February 2001, a few days before the two newly inaugurated presidents met formally for the first time.<sup>9</sup> In a separate “Memorandum to Presidents George W. Bush and Vicente Fox,” the group (which also had benefited from the membership of Jorge Castañeda, Fox’s new secretary of foreign relations) laid out for the two presidents a bilateral negotiating agenda that became the starting point for their conversation on migration.<sup>10</sup>

In February 2001, the presidents established a high-level Working Group on Migration, chaired by the secretary of state and the attorney general of the United States and the Mexican ministers of foreign relations and the interior. They tasked the group with developing a comprehensive bilateral migration deal encompassing legalization, border enforcement, and a new temporary visa program. In May, the countries announced a pair of border initiatives to discourage illegal migration through high-risk areas and to cooperate on humanitarian search-and-rescue operations.

Laying the political groundwork for broader reform, the Bush administration was leaning strongly toward a “grand bargain” that would legalize most Mexicans in the United States, combining legalization with a bilateral guest worker program and a larger Mexican role in controlling the border — the

6 George W. Bush, *Renewing America’s Purpose: The Policy Addresses of George W. Bush, 1999-2000* (Washington, DC: Republican National Committee, 2000), 195–97.

7 Kenneth Walsh with Thomas Omestad, “Broader Border?” *U.S. News & World Report* 131, August 20, 2001: 14. As recently as 1997, congressional Republicans had sought to decertify Mexico as an ally in the war on drugs pursuant to the *Anti-Drug Abuse Act of 1986*, but Republicans offered legislation in 2001 (HR 753, sponsored by Rep. Jim Kolbe [R-AZ]) to exempt Mexico from the certification process altogether.

8 Larry Birns of the Council on Hemispheric Affairs and M. Delal Baer at the Center for Strategic and International Studies, respectively, quoted in Walsh and Omestad, “Broader Border?”

9 US-Mexico Migration Panel, *Mexico-US Migration: A Shared Responsibility* (Washington, DC: Carnegie Endowment for International Peace, 2001), [www.carnegieendowment.org/pdf/files/M%20exicoReport2001.pdf](http://www.carnegieendowment.org/pdf/files/M%20exicoReport2001.pdf).

10 Author interview with Demetrios G. Papademetriou, who led the US-Mexico Migration Panel from the US side and was the lead author of the group’s final report. Although the 9/11 attacks ended these conversations, as the United States became preoccupied with homeland security, the basic logic of the task force recommendations continued to shape the US congressional debate. Key pieces that did not become part of the primary immigration conversation after 9/11 were nonetheless pursued as discrete pieces of the bilateral and regional agenda, including a Social Security totalization agreement, signed by the Bush administration and the Fox administration in 2004 but never approved by the US Congress, and several development-focused initiatives, such as the “Security and Prosperity Partnership of North America,” signed in 2005.



“whole enchilada” in Castañeda’s memorable phrase.<sup>11</sup> In September 2001, during an official state visit to Washington, Fox challenged Bush to move the stalling negotiations forward, and his gambit led the two presidents to formally endorse a framework agreement on September 6 echoing these principles and including a commitment to complete a deal by the end of the year. The summit also produced agreement on a new public-private “Partnership for Prosperity” to promote US investment in Mexico as part of a plan to reduce emigration pressures.

## II. Response to the 9/11 Attacks

Bilateral migration talks were derailed by the events of 9/11. The terrorist attacks were carried out by individuals who came to the United States with student and visitor visas, and immigration processes and border controls immediately became a central topic of concern in the aftermath. The public debates and new policy measures that followed initially conflated antiterrorism measures with immigration control. Five sweeping antiterrorism measures that also affected immigration in critical ways were enacted in the next four years. These fell into three groups.

### A. Organizational Changes

Initially, a new Office of Homeland Security within the White House was established by executive order “to develop and coordinate the implementation of a comprehensive national strategy to secure the United States from terrorist threats or attacks.”<sup>12</sup> The director reported to the president and was given broad authority to coordinate the efforts of federal, state, and local law enforcement agencies.

However, following a series of congressional hearings in 2002 that highlighted critical failures in the government’s intelligence, foreign policy, and law enforcement performance, Congress passed the *Homeland Security Act of 2002*. It brought together some or all of 22 federal agencies into a new Cabinet agency, the Department of Homeland Security (DHS).<sup>13</sup> The agencies included the US Immigration and Naturalization Service (INS), which had been part of the Department of Justice and which was divided into three new agencies within the new DHS. Creating DHS represented the largest restructuring of executive-branch functions since the establishment of the Department of Defense after World War II.

### B. Expanded Enforcement Powers within the United States

Eight days after the 9/11 attacks, the administration submitted to Congress the *Anti-Terrorism Act of 2001*, proposing broad new authority to gather domestic intelligence, combat money laundering used in terrorist financing, and streamline judicial procedures for deporting suspected terrorists. Some legislators of both parties opposed provisions to allow the indefinite detention of noncitizens and new limits on due process in some immigration enforcement cases.<sup>14</sup> But with the Bush administration pushing for an expedited legislative process, legislators agreed to sunset the due process and indefinite detention provisions after two

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11 Mexican Foreign Minister Jorge Castañeda used the phrase in June 2001 to link Mexican cooperation on guest workers and border security to legalization for unauthorized Mexicans in the United States. See Eric Schmitt, “Bush Aides Weigh Legalizing Status of Mexicans in U.S.,” *The New York Times*, July 15, 2001, [www.nytimes.com/2001/07/15/us/bush-aides-weigh-legalizing-status-of-mexicans-in-us.html?pagewanted=all&src=pm](http://www.nytimes.com/2001/07/15/us/bush-aides-weigh-legalizing-status-of-mexicans-in-us.html?pagewanted=all&src=pm).

12 Executive Order 13228, Vol. 66, No. 196 (*Federal Register*, October 8, 2001), [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2001\\_register&docid=fr10oc01-144.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2001_register&docid=fr10oc01-144.pdf).

13 The House passed the *Homeland Security Act of 2002*, creating the Department of Homeland Security, on a 295-132 vote after two days of floor debate in July 2002, and the Senate passed the bill 90-0 four months later. See *The Homeland Security Act of 2002*, Pub. L. 107-296, 107th Congress, 2<sup>nd</sup> sess., (November 25, 2002), [www.dhs.gov/xlibrary/assets/hr\\_5005\\_enr.pdf](http://www.dhs.gov/xlibrary/assets/hr_5005_enr.pdf).

14 See statement of John Ashcroft, US Attorney General, before the House Judiciary Committee, *Administration’s Draft Anti-Terrorism Act of 2001*, 107th Cong., 1st sess., September 24, 2001, [http://commdocs.house.gov/committees/judiciary/hju75288.000/hju75288\\_of.htm](http://commdocs.house.gov/committees/judiciary/hju75288.000/hju75288_of.htm).





years, and the *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001*, more commonly known as the USA PATRIOT Act, was passed in October 2001 with strong support in both chambers.<sup>15</sup>

### C. Visa Security, Immigration, and Border Controls

The PATRIOT Act mandated that the Federal Bureau of Investigation (FBI) provide criminal records to INS and State Department officials during visa screening. Within four months, Congress also passed the *Enhanced Border Security and Visa Entry Reform Act (EBSVERA)*, signed into law in May 2002. Its mandates included additional data sharing, tightened document security, and accelerated implementation of foreign student and entry-exit tracking systems.<sup>16</sup>

EBSVERA was implemented through the Justice Department's National Security Entry-Exit Registration System (NSEERS), a 2002 program which required male immigrants from 25 targeted countries as well as selected individuals from other states to submit biometric data, conduct in-person interviews with immigration officers, and re-register on an annual basis. Programs for tracking aliens' movement into and within the United States were merged into a more comprehensive US-VISIT program beginning in January 2004. Under this program, all nonimmigrants were required to submit biometric data upon receiving a visa, at ports of entry, and again upon leaving the United States, though the implementation of exit tracking has been delayed for technical reasons.<sup>17</sup>

Upon release of the 9/11 Commission's final report in July 2004,<sup>18</sup> Congress took up a fourth bill: the *Intelligence Reform and Terrorism Prevention Act (IRTPA)*. IRTPA mainly addressed the 9/11 Commission's recommendations to create an Office of the Director of National Intelligence and to fund additional surveillance, border enforcement, and immigration detention beds.<sup>19</sup> These provisions were agreed to with little controversy and signed into law in December 2004.<sup>20</sup>

The Senate, however, refused to include a pair of measures included in the House's original version of IRTPA: new federal standards for state driver's licenses, including rules to deny licenses to unauthorized immigrants, and tougher rules for people claiming political asylum. The House returned to these issues the following year, passing them (along with language to waive environmental regulations affecting the construction of border fencing) as the *REAL ID Act* in February 2005. Although the Senate never held hearings or a stand-alone vote on the *REAL ID Act*, a House-Senate conference committee attached the bill

15 The Senate passed the administration's version of the *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001* (USA PATRIOT Act) without a committee markup, by a vote of 96-1 in October, and the House followed suit, passing over a committee bill in favor of the administration's version, approved 357-66 in October. See *The USA PATRIOT Act of 2001*, Pub. L. 107-56, 107th Cong., 1<sup>st</sup> sess., (October 26, 2001).

16 *Enhanced Border Security and Visa Entry Reform Act of 2002*, Pub. L. No. 107-173, 107th Cong., 2<sup>nd</sup> sess. (March 12, 2002). The *Antiterrorism and Effective Death Penalty Act of 1996*, Pub. L. No. 104-132, 104th Cong., 2<sup>nd</sup> sess., (April 15, 1996), [www.fas.org/irp/congress/1996\\_rpt/h104518.htm](http://www.fas.org/irp/congress/1996_rpt/h104518.htm), established the Student and Exchange Visitor Information System (SEVIS) to track foreign students; and IIRIRA required development of a biometric system for tracking noncitizen entries and exits; but neither were fully funded and operational by 2001. See Deborah Waller Meyers, *US Border Enforcement: From Horseback to High-Tech* (Washington, DC: Migration Policy Institute, 2005), [www.migrationpolicy.org/ITFIAF/Insight-7-Meyers.pdf](http://www.migrationpolicy.org/ITFIAF/Insight-7-Meyers.pdf); Susan Ginsburg, *Securing Human Mobility at the U.S.-Canada Border* (Chicago: The National Strategy Forum, 2006), <http://nationalstrategy.com/Portals/0/documents/Summer%202010%20NSFR/Susan%20Ginsburg-Summer%202010%20NSFR.pdf>.

17 US Government Accountability Office (GAO), *Key US-VISIT Components at Varying Stages of Completion, but Integrated and Reliable Schedule Needed* (Washington, DC: GAO, 2009), [www.gao.gov/new.items/d1013.pdf](http://www.gao.gov/new.items/d1013.pdf).

18 National Commission on Terrorist Attacks upon the United States, *The 9/11 Commission Report* (Washington, DC: National Commission on Terrorist Attacks upon the United States, 2004), <http://govinfo.library.unt.edu/911/report/index.htm>.

19 The Bush administration announced a goal of using the added detention beds to end the practice, for non-Mexican aliens, of releasing people on bond while they await deportation hearings.

20 Previous versions of the *Intelligence Reform and Terrorism Prevention Act of 2004* passed in October by votes of 96-2 in the Senate and 282-134 in the House; votes on the final version of the bill during a lame-duck session in December 2004 were 89-2 and 336-75. See *Intelligence Reform and Terrorism Prevention Act of 2004*, Pub. L. 108-458, 108th Cong., 2<sup>nd</sup> sess., (December 17, 2004), <http://intelligence.senate.gov/laws/pl108-458.pdf>.



to an unrelated emergency war funding measure, which passed both chambers by overwhelming margins and was signed into law on May 11, 2005.<sup>21</sup>

### III. The Comprehensive Immigration Reform Debate

With passage of the *REAL ID Act*, congressional attention returned to CIR, the three-pronged approach of enhanced immigration enforcement, visa reforms to increase legal inflows, and legalization for some of the estimated 12 million or so unauthorized immigrants living in the United States at that point.<sup>22</sup> Enforcement proposals focused on further investments in border infrastructure, a range of new rules governing removals (deportation) and immigration-related criminal penalties, and measures to strengthen worksite enforcement, including one requiring all employers to use an Internet-based system for checking workers' employment eligibility against government databases, now known as E-Verify.<sup>23</sup>

Proposed visa reforms all created new employment-based visas, with proposals differing on how they should be structured (i.e., as temporary, provisional, or permanent visas),<sup>24</sup> and on whether to expand or contract family-based flows. Legalization proposals differed in their scope (how many unauthorized immigrants would qualify) and in their specific requirements and benefits. But all proposals rejected "amnesty" in favor of "earned legalization," offering conditional legal status to unauthorized immigrants who entered the United States before a certain date and who meet other retrospective requirements, but requiring them to meet additional (prospective) requirements to earn the right to remain in the United States and to apply for lawful permanent residency (i.e., green cards) and eventually for US citizenship.<sup>25</sup>

Bush put CIR on the agenda in January 2004 by presenting Congress with a statement of principles focused on a broad new temporary worker program "to match willing workers with willing employers"

- 21 Sen. Johnny Isakson (R-GA) proposed a *REAL ID* amendment during the Senate's debate over the supplemental appropriations bill in April 2005, but withdrew his amendment when it became clear that it would be defeated if called for a vote; Sen. Dianne Feinstein (D-CA) offered an amendment to strike *REAL ID* from the bill, but the amendment was prevented from coming for a vote on procedural grounds. The overall appropriations bill (Pub. L. No. 109-013) passed by 368-58 in the House and 100-1 in the Senate.
- 22 The estimated number of unauthorized immigrants in the United States peaked during the CIR debate at 12 million in 2007, before falling to an estimated 11.1 million in 2009. See Jeffrey Passel and D'Vera Cohn, *U.S. Unauthorized Immigration Flows are Down Sharply since Mid-Decade* (Washington, DC: Pew Hispanic Center, 2010), <http://pewhispanic.org/reports/report.php?ReportID=126>.
- 23 On the electronic employment eligibility verification system, known as Basic Pilot from 1997-2006 and as E-Verify from 2006 onwards, see Doris Meissner and Marc R. Rosenblum, *The Next Generation of E-Verify: Getting Employment Verification Right* (Washington, DC: Migration Policy Institute, 2009), [www.migrationpolicy.org/pubs/Verification\\_paper-071709.pdf](http://www.migrationpolicy.org/pubs/Verification_paper-071709.pdf); and Marc R. Rosenblum, *E-Verify: Strengths, Weaknesses, and Proposals for Reform* (Washington, DC: Migration Policy Institute, 2011), [www.migrationpolicy.org/pubs/E-Verify-Insight.pdf](http://www.migrationpolicy.org/pubs/E-Verify-Insight.pdf).
- 24 Provisional visas initially grant temporary status, but allow visa holders to adjust to lawful permanent residency after a certain amount of time as long as they meet prespecified visa requirements, such as remaining employed. See Demetrios G. Papademetriou, Doris Meissner, Marc R. Rosenblum, and Madeleine Sumption, *Aligning Temporary Immigration Visas with US Labor Market Needs: The Case for a New System of Provisional Visas* (Washington, DC: Migration Policy Institute, 2009), [www.migrationpolicy.org/pubs/Provisional\\_visas.pdf](http://www.migrationpolicy.org/pubs/Provisional_visas.pdf).
- 25 In contrast, previous US legalization had been structured as an amnesty, which offered lawful permanent residence to groups of unauthorized immigrants on the basis of their having met retrospective requirements alone. On the history of US legalization programs, see Donald M. Kerwin, *More than IRCA: US Legalization Programs and the Current Policy Debate* (Washington, DC: Migration Policy Institute, 2010), [www.migrationpolicy.org/pubs/legalization-historical.pdf](http://www.migrationpolicy.org/pubs/legalization-historical.pdf); on differences between amnesty and earned legalization, see Marc R. Rosenblum, *Immigrant Legalization in the United States and European Union: Policy Goals and Program Design* (Washington, DC: Migration Policy Institute, 2010), [www.migrationpolicy.org/pubs/legalization-policydesign.pdf](http://www.migrationpolicy.org/pubs/legalization-policydesign.pdf); and for a detailed discussion of the earned legalization proposals considered in 2006-07, see Marc R. Rosenblum, Randy Capps, and Serena Yi-Ying Lin, *Earned Legalization: Effects of Proposed Requirements on Unauthorized Men, Women, and Children* (Washington, DC: Migration Policy Institute, 2011), [www.migrationpolicy.org/pubs/legalization-requirements.pdf](http://www.migrationpolicy.org/pubs/legalization-requirements.pdf).



and by identifying immigration reform (along with tax cuts and Social Security reform) as a top legislative goal in his State of the Union address.<sup>26</sup> The president failed to send Congress a specific legislative proposal, however, and Congress proceeded along two separate tracks beginning in 2005. The Senate focused on all three elements of comprehensive reform, as a majority of senators voted in favor of an AgJOBS amendment during the April 2005 *REAL ID* debate,<sup>27</sup> and senators filed three separate comprehensive reform proposals in the fall.<sup>28</sup> But with the Senate Judiciary Committee (with jurisdiction over immigration matters) focused on a pair of Supreme Court nominations, the House moved first to pass an immigration bill, voting mostly along party lines to pass Rep. James Sensenbrenner's (R-WI) *Border Protection, Antiterrorism, and Illegal Immigration Control Act* (HR 4437), a wide-ranging immigration enforcement bill that did not include any legalization provisions or visa reforms.<sup>29</sup>

The passage of HR 4437 was a wake-up call to supporters of the Senate's more comprehensive approach. Millions of people<sup>30</sup> — mostly Latino immigrants and their families — marched in dozens of protests around the country, giving supporters of CIR additional momentum. After several weeks of debate, four Republicans joined eight Democrats on the Senate Judiciary Committee to send to the Senate floor a bill that tracked legislation originally proposed by Sens. John McCain (R-AZ) and Edward Kennedy (D-MA); of the Senate bills under consideration, this was the most generous (in that it covered the most people).

The bill struggled on the Senate floor, however, as Democrats blocked votes on a number of “poison pill” amendments (i.e., amendments that would render the bill unpassable, but that Democrats were reluctant to oppose). After two weeks of debate during which Democrats permitted votes on only five amendments, Republican supporters of the bill refused to support the Democrats' motion to end the debate, and the bill was defeated on a procedural vote.<sup>31</sup>

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### *The 2006 Senate vote for the bill known as McCain-Kennedy would prove to be the high-water mark for CIR.*

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Even as progress was derailed on the Senate floor, a bipartisan group of senators working with the White House and Senate leaders agreed to new legalization and temporary worker provisions to attract more Republican supporters.<sup>32</sup> With the support of most Democrats and several additional Republicans, this group brought the bill back to the floor, worked together to defeat the “poison pill” amendments, and voted on a total of 37 amendments over two weeks of debate before successfully filing for cloture and passing the *Comprehensive Immigration Reform Act of 2006* (S. 2611) with bipartisan support.<sup>33</sup>

26 See e.g., White House, “Fact Sheet: Fair and Secure Immigration Reform,” (fact sheet, January 7, 2004), <http://georgewbush-whitehouse.archives.gov/news/releases/2004/01/20040107-1.html>.

27 The Senate voted 53-45 in favor of an amendment offered by Sens. Larry Craig (R-ID) and Edward Kennedy (D-MA) that was similar to the Democratic version of AgJOBS considered in 2001, but the amendment needed 60 votes to be considered for inclusion in the bill and thus fell short.

28 Sens. John McCain (R-AZ) and Edward Kennedy (D-MA)'s *Secure America and Orderly Immigration Act* (S. 1033), Sens. John Cornyn (R-TX) and Jon Kyl's (R-AZ) *Comprehensive Enforcement and Immigration Reform Act* (S. 1438), and Sen. Chuck Hagel's (R-NE) package of four separate bills (S. 1916–S. 1919).

29 HR 4437 passed 239-182 on December 16, 2005, with 17 Republicans and 36 Democrats crossing party lines.

30 By some estimates, turnout at the spring marches was in the 3.5 million to 5 million range. See Xochitl Bada, Jonathan Fox, Robert Donnelly, and Andrew Selee, *Context Matters: Latino Immigrant Civic Engagement in Nine U.S. Cities* (Washington, DC: Woodrow Wilson International Center for Scholars, 2010), [www.wilsoncenter.org/sites/default/files/National%2520Report%2520English.pdf](http://www.wilsoncenter.org/sites/default/files/National%2520Report%2520English.pdf).

31 Six Democrats joined every Republican in voting against cloture.

32 Under the compromise, long-term unauthorized immigrants (those who had been in the country at least five years) could earn legal status without leaving the United States (as in the McCain-Kennedy bill), but short-term unauthorized immigrants (those who had been in the country two to five years) would be required to exit the country and reenter as guest workers (as in the Cornyn-Kyl legislation).

33 The bill passed by votes of 73-25 (on the cloture motion) and 62-36 (on final passage). Two of 45 Democrats crossed party



The 2006 Senate vote for the bill known as McCain-Kennedy would prove to be the high-water mark for CIR. By May, popular pressure for reform had swung in the other direction, in part because the high-profile marches throughout the spring prompted a backlash against demonstrators, some of whom waved Mexican flags and adopted confrontational attitudes. House leaders did not appoint conferees to work out a compromise between the two chambers' bills. Instead, facing mid-term elections and pressure to bring some action on immigration to their electorates, both chambers enacted the *Secure Fence Act of 2006*. It required the construction of an estimated 700 miles of double-fencing and additional surveillance infrastructure along the Southwest border. President Bush signed it days before the November elections.<sup>34</sup>

Immigration was not a dominant theme in the 2006 mid-term elections, but Democratic supporters of comprehensive reform defeated enforcement-only Republicans in 13 of the 15 races in which immigration was considered a wedge issue. New Democratic majorities in both houses of Congress seemed to bode well for CIR efforts in 2007.<sup>35</sup> After taking a hands-off approach in 2006, President Bush was more active in 2007, working with Kennedy and Sen. Jon Kyl (R-AZ), among others, to reach a "grand bargain" on the *Secure Borders, Economic Opportunity, and Immigration Reform Act of 2007* (S. 1348).

Compared to the 2006 bill, S. 1348 proposed more generous legalization provisions (i.e., covering more people), but offered less certainty that legalization would lead to lawful permanent residence or a path to US citizenship. The 2007 bill included a temporary worker program (that required immigrants to leave after two years and limited their total time in the United States to six years rather than offering provisional visas as in 2006) as well as tougher worksite and interior enforcement provisions with fewer due process protections. A final difference was that the bill created a new visa point system that shifted some green cards from family- to employment-based visas.

As in May 2006, a bipartisan group of senators met daily during two weeks of floor debate to defend the grand compromise against poison pills. But after two weeks of debate and votes on 30 amendments, the coalition split over Republican requests to vote on additional amendments. A Democratic effort to file a cloture motion received just 33 of the necessary 60 votes to end debate.

Once again, a deal was reached to bring the bill back to the floor, with the bill's supporters and Senate leaders agreeing to a list of 26 specific amendments to consider. All were viewed as poison pills. The coalition defeated the first six amendments, but when eight advocates for tough immigration enforcement joined liberal opponents of the *REAL ID Act* to support an amendment that weakened the bill's driver's license requirements, the "grand bargain" fell apart; 16 Democrats joined 37 Republicans to defeat the bill on a cloture vote.

Supporters of CIR made further electoral gains in 2008. Democrats captured the White House and large majorities in both chambers of Congress. Barack Obama promised during his presidential campaign to push for immigration reform during his first year in office.<sup>36</sup> After Kennedy stepped down from the Judiciary Committee, then passed away in 2009, the Senate's immigration efforts were led by Immigration Subcommittee Chairman Charles Schumer (D-NY). He worked with Lindsey Graham (R-SC) on a new bipartisan framework.

Schumer and Graham agreed to combine more generous legalization provisions with tougher enforcement measures, including a biometric identity card for all US workers. But they disagreed over

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lines to vote against cloture and four Democrats opposed the bill on final passage; 31 of 55 Republicans voted for cloture, and 23 Republicans supported the bill on final passage.

34 *Secure Fence Act of 2006*, Pub. L. No. 109-367, 109<sup>th</sup> Cong., 2<sup>nd</sup> sess. (October 26, 2006),

[www.gpo.gov/fdsys/pkg/PLAW-109publ367/pdf/PLAW-109publ367.pdf](http://www.gpo.gov/fdsys/pkg/PLAW-109publ367/pdf/PLAW-109publ367.pdf). The act passed in the House by a vote that was mostly along party lines (with 64 Democrats and six Republicans crossing party lines); in the Senate it passed with Democrats evenly split and all but one Republican supporting the bill (on votes of 71-28 for cloture and 80-19 for final passage).

35 Chris Dorval and Andrea LaRue, "Immigration Fails as Wedge Issue for GOP; Succeeds in Expanding Base for Democrats," (news release, November 8, 2006, Immigration 2006.org).

36 Bennett Roth, "Obama, McCain Address Hispanics," *Houston Chronicle*, July 8, 2008.



how to manage employment-based migration (especially for low-skilled, temporary workers), and Graham was unable to find a second Republican cosponsor for the bill.

As bipartisan negotiations stalled, Democrats in both chambers offered their own bills. In the House, Reps. Luis Gutierrez (D-IL) and Solomon Ortiz (D-TX), and other members of the Congressional Hispanic Caucus, offered the *CIR for America's Security and Prosperity (CIR-ASAP) Act* in December 2009. The bill took the McCain-Kennedy approach as its starting point but replaced its business-friendly guest-worker program with a short-term program to allow regional visas for Mexico and other countries with large unauthorized populations, and established an expert commission to design a new employment-based visa system beginning the following year.<sup>37</sup>

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*Legislative action in the 111th Congress was limited to the DREAM Act.*

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In the Senate, Sens. Bob Menendez (D-NJ), Patrick Leahy (D-VT), and Arlen Specter (D-PA) offered the *Comprehensive Immigration Reform Act of 2010* (S. 3932), taking the Schumer-Graham framework as their starting point, but eliminating that proposal's biometric ID card and establishing an independent commission to set visa limits for future low-skilled, temporary workers. Neither of the Democratic bills were brought up for votes, however, and legislative action in the 111th Congress was limited to the DREAM Act, which passed the House on a 216-198 vote during a December 2010 lame-duck session but was defeated in the Senate on a procedural vote, falling five votes short of the 60 votes needed to proceed to debate.

## **IV. Analysis: The Failure of Comprehensive Reform, 2006-10**

Throughout the 20<sup>th</sup> century, and particularly in the 20 years after the end of the US-Mexican Bracero Program, the US immigration system tolerated a high degree of illegality and tacitly permitted widespread illegal employment in agriculture and other low-skilled sectors of the economy. Notably, Congress explicitly rejected proposals in the 1950s to make it illegal to hire or employ unauthorized immigrants, and considered and then rejected other bills that included employer sanctions at various points in the 1960s and 1970s. Even the 1986 *Immigration Reform and Control Act (IRCA)* was written and implemented in a way that generally failed to prevent employers from hiring unauthorized workers.

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*The lesson of the post-9/11 period is not that the US immigration policymaking system is paralyzed.*

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This system was a stable policy regime for many years because it assured a supply of low-wage immigrant workers without forcing lawmakers to confront difficult questions about how many

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<sup>37</sup> On a Standing Commission to set employment-based visa rules, see Demetrios G. Papademetriou, Doris Meissner, Marc R. Rosenblum, and Madeleine Sumption, *Harnessing the Advantages of Immigration for a 21<sup>st</sup>-Century Economy: A Standing Commission on Economic Competitiveness, Labor Markets and Immigration* (Washington, DC: Migration Policy Institute, 2009), [www.migrationpolicy.org/pubs/StandingCommission\\_May09.pdf](http://www.migrationpolicy.org/pubs/StandingCommission_May09.pdf).



immigrants (legally) to admit. But as the real and perceived costs of illegality increased, the system came under pressure to reform.

The lesson of the post-9/11 period is *not* that the US immigration policymaking system is paralyzed: Congress and President Bush agreed to a total of six immigration enforcement measures in 2001-06 — on the heels of significant new border enforcement measures dating from the 1980s and interior enforcement measures dating from the 1990s.<sup>38</sup> Such enforcement efforts — especially in the context of the post-2008 economic downturn — have pushed immigrant apprehensions to a 40-year low and immigrant removals to an all-time high; and the unauthorized immigrant population in the United States has shrunk by 1 million people.<sup>39</sup>

Policymaking activity has been one sided, however, as visa reform and legalization proposals have been blocked in Congress despite the support of two presidents, members of Congress from both parties, and several powerful interest groups. What then explains the asymmetry in the US immigration debate and the decision by three successive congresses not to pass a CIR bill?

In part, the asymmetry is a function of the evolution of US immigration policy over the past four decades — the system relied for many years on a tacit acceptance of illegal inflows and unauthorized employment, so that illegality came to define the immigration policy problem, with tougher enforcement being the default policy response. In the short term, Congress's decision not to pass CIR bills in 2006-10 also reflects bad timing for those who favor CIR, with generous immigration bills partly thwarted by electoral considerations in 2006 and 2007 and the economic downturn after 2008. But these short-term obstacles also reveal deeper political challenges related to how coalitions and interest groups interact with immigration policy, challenges that raise important questions about the future of US immigration reform.

### **A. Asymmetries in the Immigration Debate: Enforcement as the Default Immigration Policy**

In general, “fixing” the “broken” immigration system could be accomplished through legalization and reforms to create more legal visas, through more effective immigration enforcement, or through a combination of the two — the logic of CIR. However, immigration policymaking is strongly biased in favor of enforcement rather than legalization or visa reform, for at least three reasons.

First, after 40 years of illegal immigration, unauthorized immigrants are a visible and quantifiable reflection of policy flaws. Tough enforcement offers a concrete and direct policy response: every person detained and deported is one fewer unauthorized immigrant in the United States. The arguments linking the supply and demand of labor to the causes of illegal immigration, on the other hand, rely on sophisticated assumptions about complex social and economic systems.

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*Immigration policymaking is strongly biased in favor of enforcement rather than legalization or visa reform.*

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There is a similar asymmetry in the argument surrounding enforcement versus legalization or visa reform: unauthorized immigrants have made a choice that resulted in their illegal status, and they bear some individual responsibility for those decisions. But there is no individual-level “blame” to be assigned for structural design flaws in the immigration system.

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38 On post-1980s enforcement measures, see Brick and Rosenblum, *US Immigration Policy and Mexican/Central American Migration Flows: Then and Now*.

39 Passel and Cohn, *U.S. Unauthorized Immigration Flows Are Down Sharply since Mid-Decade*.



For these reasons, immigration enforcement is what social scientists call a “valence” issue: it is easy for politicians of all backgrounds to support immigration enforcement measures, but it is difficult for politicians to defend any vote against migration enforcement. Conversely, while many advocates for CIR compare their effort to the 1960s civil-rights movement, they have not persuaded most Americans that deporting unauthorized immigrants is unjust or immoral. As a result, visa reform and legalization are not valence issues, and most politicians don’t face similar broad pressure to support CIR. These dynamics create a ratchet effect: it is relatively easy for Congress and the executive branch to pass and implement new enforcement measures, moving the starting point for the next round of debate, but much more difficult to dial back on enforcement or to make incremental changes to migration benefits.

Second, tacit acceptance of illegal immigration for many years relied on the *nonenforcement* of existing laws governing immigration controls at the border and at worksites. Thus, legalization and visa reform generally require passing new laws to increase the number of visas, but reducing immigration through tougher immigration controls theoretically can be accomplished by more aggressive enforcement of existing laws — laws that already permit fewer admissions than now occur.<sup>40</sup> Immigration hardliners are therefore at an advantage because the pluralistic American political system with its multiple “veto points” makes it easy to defend existing legislation and difficult to enact legislative changes. Opponents of CIR may exploit procedural rules to defeat proposed legislation but feel little pressure to propose viable legislative alternatives.

A final source of asymmetry relates to the costs and benefits of migration enforcement. Several groups have a financial stake in migration control, including private detention contractors, construction and surveillance companies responsible for southern border enforcement, Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) unions, and state and local law enforcement agencies that have formed ICE partnerships. These groups derive concentrated benefits from migration-control efforts, and they are effective lobbyists on Capitol Hill and within the executive branch for continued investment in enforcement. Meanwhile, the federal government bears most enforcement expenses, diffusing the financial costs of enforcement and leaving no one with a direct economic stake in lobbying against them. The primary costs of enforcement fall on unauthorized immigrants and their families and communities, groups with little political power or influence that face significant barriers to effective political organizing.<sup>41</sup>

## **B. Short-Term Political Considerations Have Discouraged Comprehensive Reform Efforts**

In the short term, supporters of CIR also face political barriers to reform related to partisan politics and the electoral calendar. Once the Senate passed its CIR bill in May 2006, House Republicans, who controlled the calendar in that chamber, calculated that they had little to gain politically from negotiating with Senate Democrats about the specifics of an immigration bill. And rather than appointing conferees to advance a bill, they used the passage of the Senate bill as a launching point for field hearings over the summer, aimed at mobilizing anti-immigration voters.<sup>42</sup>

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40 Indeed, under existing law, 2 million people were formally removed (deported) in fiscal years 2005-09, while fewer than 100,000 removable aliens received green cards through cancellation of removal, though an unknown number of unauthorized immigrants also obtained green cards through regular family- and employment-based channels. See US Department of Homeland Security (DHS), *Yearbook of Immigration Statistics* (Washington, DC: DHS, 2009), [www.dhs.gov/files/statistics/publications/yearbook.shtm](http://www.dhs.gov/files/statistics/publications/yearbook.shtm).

41 Many political scientists have made the opposite argument about the broader immigration policy debate: that liberal migration policies offer concentrated benefits to immigrant employers and families, and diffuse costs to native-born workers. See Gary Freeman, “Modes of Immigration Politics in Liberal Democratic States,” *International Migration Review* 29, no. 4 (1995): 881–902.

42 House field hearings in August and September 2006 included as their subjects “Is the Reid-Kennedy Bill a Repeat of the Failed Amnesty of 1986?” “How Does Illegal Immigration Impact American Taxpayers?” and “Will the Reid-Kennedy Amnesty Worsen the Blow?”



Similarly, in 2007, key Republican moderates who had taken the lead in earlier Senate CIR negotiations — John McCain, Sam Brownback (R-KS), Chuck Hagel (R-NE), and Lindsey Graham — all tacked to the right or avoided immigration issues while considering presidential runs (in the first three cases) or reelection (Graham). Mel Martinez (R-FL) also pulled back from the immigration debate when he became chairman of the Republican National Committee. For these reasons, the Republican leader of the “grand bargain” coalition was Jon Kyl, one of the strongest opponents of the 2006 bill. The resulting compromise — easier access to conditional legalization but no sure path to citizenship for legalizing immigrants, tougher immigration enforcement provisions, and less generous visa reforms — alienated pro-CIR interest groups from the left and right.

By 2009, when the Obama administration took office along with strong Democratic majorities in both chambers of Congress, the recession further complicated the politics of immigration reform. Business groups who brought Republicans to the table in 2006-07 were less engaged in the push for CIR, and labor unions were less inclined to back away from their traditional opposition to temporary worker programs. More generally, high unemployment made it difficult for anyone to justify a CIR bill that included hundreds of thousands of new employment-based visas, a feature at the heart of the 2006 and 2007 bills.

This timing also meant that while Presidents Bush and Obama both supported CIR, neither made CIR a top legislative priority. Bush placed CIR on the agenda, but then formally endorsed the enforcement-only HR 4437 in 2005, and never fully embraced the 2006 Senate bill. And while Bush worked more publicly and energetically in support of the 2007 grand bargain, his lame-duck status and low public approval ratings by that time limited his influence with many Republicans. President Obama devoted a major speech to immigration policy in July 2010, but immigration reform lost out to health care, economic stimulus, and financial reform in the competition for the president’s attention during the first two years of his term.<sup>43</sup>

### **C. The Difficult Politics of Comprehensive Immigration Reform**

These short-term challenges reflect a pair of deeper political obstacles to CIR. First, while powerful interest groups associated with both Democrats and Republicans favor comprehensive reform, the pro-reform coalition is characterized by divisions between groups with competing priorities. Business groups favor CIR as long as it includes ample employment-based visas; they oppose tough worksite enforcement and are less concerned about legalization or family-based visas. Labor unions are also important members of the pro-CIR coalition, but they are primarily concerned with legalization, and they favor tough worksite enforcement and oppose employment-based visas under most circumstances. Religious, civil-liberties, and immigrant-rights groups are primarily concerned about legalization and family-based visa reforms, as well as broader immigration enforcement questions.

These divides force supporters of CIR to negotiate careful compromises that are hostage to the support of disparate groups with limited experience cooperating with one another. Groups opposing CIR, on the other hand, generally face no such divisions: they are unified in their opposition to any new visas and to legalization for any unauthorized immigrants, and in their support for more and tougher enforcement measures.

At the grassroots level, at least two key constituencies remain skeptical, at best, about the merits of legalization and of relatively generous immigration rules: social conservatives who traditionally favor Republicans, and blue-collar workers who historically favored Democrats but have become swing voters since the 1980s. These groups give members of both parties electoral incentives to oppose CIR bills,

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<sup>43</sup> Even in December 2010, when Congress debated the DREAM Act in the closing days of a lame-duck session, the White House placed greater emphasis on gaining Senate support for the *New START Treaty* and a repeal of the military’s “don’t ask don’t tell” policy than for passage of the DREAM Act.





and make it especially important for Republicans facing competitive primary elections. The economic downturn and growing American skepticism about the benefits of globalization have raised the stakes even further for many voters, in particular those in battleground states in the Midwest and Southeast that have seen rapid economic restructuring and significant new immigration — the majority of it illegal — during the past two decades.

Latinos are a third important constituency, and some members of both parties see them as swing voters. Since they generally favor legalization and visa reform, Latinos' demographic gains and potential political influence create countervailing electoral incentives in favor of CIR bills. But even though Latinos recently passed African-Americans as the largest US minority group and are the main demographic force behind US population growth in the past decade, they have lower incomes, education levels, and political participation rates than other ethnic groups.<sup>44</sup> Thus, while pro-CIR marches helped break the stalemate in the Senate in the spring of 2006, their long-term impact on the debate was ambiguous at best,<sup>45</sup> and anti-CIR groups have been more successful in mobilizing phone calls and e-mails, shutting down congressional switchboards during the Senate debates in 2006 and 2007, and marginalizing (or voting out of office) most pro-CIR Republicans.

## V. Conclusion: The Future of Immigration Reform

The asymmetries of immigration enforcement versus legalization and visa reform on the one hand, and the short- and long-term political barriers to passing CIR legislation on the other explain the history of US immigration policy in the post-9/11 period. Robust immigration enforcement efforts along the US-Mexico border and within the United States since the 1990s have intensified, but no significant steps have been taken to liberalize immigrant admissions or to legalize unauthorized immigrants already within the United States.

These observations focus attention on four factors that may influence the future of the US immigration debate. On a political level, the fate of immigration reform will depend in part on the size and distribution of swing-voting Latinos versus blue-collar independents and “globalization losers.” The demographic trends make one side of this equation easy to predict: Latinos will be 18 percent of the US population in 2020 and 20 percent in 2030. They are concentrated in now-reliably Republican states such as Texas and Arizona, as well as critical swing states such as Florida, Colorado, and Nevada. The prospects for comprehensive reform increase with the political influence of Latino voters, but how these demographics translate into policy outcomes depends on several unanswered questions: How many Latino immigrants will naturalize? Will Latino citizens register and vote? Will both political parties compete for their support? How will Latino influence be affected by congressional redistricting? And will Latinos continue to identify immigration reform as a top policy priority?

On the other side of the equation, prospects for CIR also improve if native blue-collar voters support such reforms, or at least if politicians no longer see opposing CIR as a way to appeal to this constituency. Blue-collar support for legalization and visa reform could increase as a result of economic growth or redistributive policies that make working-class Americans more secure in their economic futures (i.e., by shrinking the pool of “globalization losers”), or by convincing low- and semi-skilled native workers

44 Accounting for age and citizenship status, only 41 percent of all Latinos were eligible to vote in 2009, compared to 74 percent of non-Latinos. Latinos had the lowest citizenship rates of any ethnic group, with 62 percent of the voting-age population being US citizens, compared to 66 percent for Asians, 84 percent for Pacific Islanders, 95 percent for blacks, 98 percent for whites, and 99 percent for American Indians. See Angelo Falcón, “Citizenship and Latino Voting Eligibility,” February 10, 2011, National Institute for Latino Policy, [http://myemail.constantcontact.com/NilP-Latino-Datanote--Citizenship-and-Latino-Voter-Eligibility.html?soid=1101040629095&aid=tF-9cuBtT\\_c](http://myemail.constantcontact.com/NilP-Latino-Datanote--Citizenship-and-Latino-Voter-Eligibility.html?soid=1101040629095&aid=tF-9cuBtT_c).

45 US Census Bureau, *Hispanics in the United States* (Washington, DC: Census Bureau), [www.census.gov/population/www/socdemo/hispanic/files/Internet\\_Hispanic\\_in\\_US\\_2006.pdf](http://www.census.gov/population/www/socdemo/hispanic/files/Internet_Hispanic_in_US_2006.pdf).



that they too have a stake in CIR (because most Americans derive economic benefits from immigration and because enforcement-only policies are expensive).

A second question that emerges from this review of the post-9/11 period is whether CIR is the right legislative strategy to accomplish legalization and visa reform. Advocates for CIR argue that it makes sense politically because it broadens the coalition in favor of reform, and CIR is good public policy because addressing enforcement, visa reform, and legalization together would be the most efficient way to confront the various sources of dysfunction in the current system. Pro-immigrant advocates also worry that decoupling legalization from the other elements of CIR would make it more difficult to gain support for a broad legalization program; and some of these stakeholders have resisted calls to work for the passage of the DREAM Act or AgJOBS as stand-alone bills.

But the American political system is strongly biased against comprehensive legislation of any kind, and opponents of legalization and visa reform have had great success in pursuing a divide-and-conquer strategy to disrupt the disparate groups comprising a theoretical CIR coalition. Compromises that were necessary to keep Republican supporters on board in 2006 and 2007 — tough enforcement provisions, uncertainty about green cards for immigrants receiving legalization, and the replacement of some family-based visas with a controversial points system — caused some liberal and immigrant-rights groups to withdraw their support for the compromises, peeling off Democratic votes. And opponents of CIR in the Senate defeated the 2007 bill by strategically voting against new driver’s license mandates that they favored, thus forcing Republican supporters of CIR to withdraw their support for the legislation. The repeated failures of the CIR legislative strategy may force advocates for legalization and visa reform to focus on smaller legislative initiatives or executive actions that accomplish these goals more incrementally. Meanwhile, the defeat of the DREAM Act in 2010 (and AgJOBS in 2000) shows that even incremental reforms will be difficult to pass, and that party leaders on both sides of the aisle may hold reforms hostage to broader political considerations.

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*The American political system is strongly biased  
against comprehensive legislation of any kind.*

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Third, while opinion polls find that most Americans support CIR as a practical way to fix a broken immigration system, supporters of legalization and visa reform have not convinced most voters that CIR should be a top priority, or that enforcement-only policies are not a viable alternative to CIR. Part of the issue is that the dominant frame for the immigration debate since the 1970s has been around criminality and security threats associated with unauthorized immigrants, a frame which naturally focuses attention on law enforcement solutions. Immigrant advocates must find a way to confront the law-and-order question — the perception that unauthorized immigrants should be punished, not rewarded with legalization — by making the case that legalization is not just cost-effective but represents sound policy with economic, societal, and immigrant integration benefits.

At the same time, the case for CIR also turns on the costs and benefits of the enforcement alternatives. On one hand, supporters of CIR may respond to “enforcement-first” proposals by pointing to a range of enforcement measures enacted in the post-9/11 period (and previously), and to recent signs that some of these measures are paying off. On the other hand, an important argument in favor of CIR is that the true costs of implementing “enforcement-only” measures to remove 11 million unauthorized immigrants and prevent future inflows would be prohibitive. A full accounting of these costs includes the opportunity costs for other law enforcement efforts, downstream costs to the detention and judicial systems, diplomatic costs, costs to legal immigrant communities and social cohesion, and the vast economic impact of immigrant removals and of enforcement-only policies at the worksite.



Finally, the future of the US immigration debate also turns on the broader regional context in which migration takes place — one that involves deep economic integration but also important questions about security conditions at the border and beyond. No less so today than before the 9/11 attacks, truly comprehensive migration reform should include policies aimed at the strategic management of migration flows to the benefit of both sending and receiving states, as well as long-term investments in competitive workers and infrastructure to promote regional development as an alternative to migration. Yet the concerns about the trajectory of Mexico’s battle against regional drug cartels threaten to overwhelm any broader conversation about bilateral migration issues. The resumption of a meaningful bilateral or regional dialogue about common US and Mexican interests in an orderly migration system could make a helpful contribution to the national migration debate.



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## About the Author



Marc R. Rosenblum is a Specialist in Immigration Policy at the Congressional Research Service and at the time of the writing of this report was a Senior Policy Analyst at the Migration Policy Institute (MPI) and Co-Director of MPI's Regional Migration Study Group. An Associate Professor of Political Science at the University of New Orleans, Dr. Rosenblum is the author of *The Transnational Politics of US Immigration Policy* (University of California, San Diego Center for Comparative Immigration Studies, 2004) and has also published over 40 academic journal articles, book chapters, and policy briefs on immigration, immigration policy, and US-Latin American relations. He is the coeditor of *The Oxford Handbook of International Migration* (Oxford University Press, forthcoming).

Dr. Rosenblum earned his B.A. from Columbia University and his Ph.D. from the University of California, San Diego. In 2005-06, he served as a Council on Foreign Relations International Affairs Fellow at MPI and on the US Senate Judiciary Committee's immigration subcommittee; and in 2008-09 he served on President-Elect Barack Obama's Presidential Transition Team Immigration Policy Committee.

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1400 16<sup>th</sup> Street NW  
Suite 300  
Washington, DC 20036

Tel: 001 202-266-1940  
Fax: 001 202-266-1900