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Reforming Immigration for the 21st Century

America's immigration system has reached a crisis point. Millions of workers, families, and community members are living in the shadows. Businesses cannot hire the workers they need. Thousands are stuck waiting for years to reunite with loved ones in the United States. Every year, the Department of Homeland Security (DHS) removes nearly 400,000 people, separating families and causing more pain in the community.

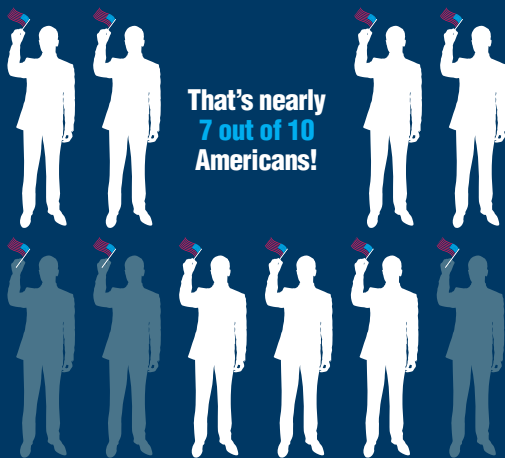
Despite the growing public support for immigration reform—

three out of four Americans support it—the House has yet to pass a bill. AILA calls upon Congress to use every tool at its disposal to find a permanent solution to the nation's immigration crisis. The window for Congress to move is closing. Words are not enough. Both parties must act now.

To the House Republican leadership, we ask you to give immigration reform the vote it deserves. To the House Democratic minority, keep pushing for reform and show that you will do what it takes to pass a bipartisan bill.

ROAD TO CITIZENSHIP

By a **68 PERCENT TO 15 PERCENT MARGIN**, respondents in a January 2014 Fox News poll support “allow[ing] illegal immigrants to remain in the country and eventually qualify for U.S. citizenship, but only if they meet certain requirements like paying back taxes, learning English, and passing a background check.”



New citizens embrace after naturalization ceremony on Feb. 14, 2013 in Tampa, FL. -Getty Images

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REFORMING IMMIGRATION FOR THE 21ST CENTURY

LEGALIZATION

- Immigration reform must legalize the status of those who are undocumented and give them an opportunity to apply for permanent residence, and ultimately citizenship if they choose.
- Legalization should not keep people waiting a long or an indefinite period of years in limbo status. That is not fair or reasonable.
- The legalization plan should be broad and inclusive to ensure the greatest number of people can come out of the shadows. The three-year, 10-year, and permanent “bars” that prevent undocumented immigrants from legalizing should be eliminated. A discretionary waiver should be available for those who do not meet all the eligibility criteria.
- If legislation does not include a “special path to citizenship,” enough slots must be added in the business and family green card categories for those who legalize. The changes to the system must also clear the “backlogs” in existing categories.

THE LEGAL IMMIGRATION SYSTEM

America’s legal immigration system must be reformed to provide a flexible and smoothly functioning system that meets the needs of our families, the economy, and our society. The Senate’s approach to reforming our broken immigration system, embodied in S.744, tackles one of the fundamental shortcomings of our current legal immigration system, the lack of sufficient numbers of green cards and nonimmigrant visas.

- **ALL ASPECTS OF OUR IMMIGRATION SYSTEM ARE VITAL TO OUR NATIONAL INTEREST.** Green cards in one category should not be cut to offset an increase in another category. Unfortunately, **H.R. 2131, the Supplying Knowledge Based Immigrants and Lifting Levels of STEM Visas (SKILLS) Act**, bolsters business-related green cards by taking green cards from family and diversity categories rather than increasing the overall numbers.
- **EXISTING BACKLOGS IN THE FAMILY- AND EMPLOYMENT-BASED CATEGORIES MUST BE CLEARED.** Measures must be implemented to ensure that lengthy backlogs will not recur in the future, such as recapturing green cards that go unused from previous years and exempting accompanying spouses and children from the annual numerical limits on employment-based green cards.

FAMILY: Family is the cornerstone of American values, but the immigration system often hurts families by keeping loved ones apart or separating them for years. AILA recommends the following fixes:

- ▷ Retain all family-based preference categories and set them at adequate levels to allow family members to unite in a reasonable period of time.
- ▷ Include spouses and children of lawful permanent residents (currently the family-based 2A category) within the definition of “immediate relative.”
- ▷ Provide for the equal treatment of same-sex families in all aspects of immigration law where a qualifying family relationship is required.

BUSINESS: Congress must create a future flow program that ensures American businesses have access to essential workers in the United States, protects workers’ rights, guarantees fair wages and working conditions, and provides workers with a means to apply for green cards if they choose to do so. The Senate included the framework for a future flow program in S.744 and the House is reportedly working on their own version of such a program. AILA recommends the following:

- ▷ Retain in the Congress, and not with an advisory board, the authority to establish appropriate levels of immigration flow.
- ▷ Scale any proposals for nonimmigrant visas to ensure that undue burdens do not fall unfairly on small- and medium-sized businesses.
- ▷ Address the agriculture sector’s needs; unfortunately the House bill, **H.R. 1773, the Agricultural Guest Worker Act**, falls far short of the mark. While intended to streamline the current H-2A program, the bill does not effectively address the current undocumented workforce in the agricultural sector, nor offer those workers who would be eligible for a nonimmigrant visa under the bill to apply for a green card in the future.
- ▷ Ensure green cards are available for science, technology, engineering and math (STEM) graduates, entrepreneurs, and investors.
- ▷ Enable the legitimate market need for H-1B visas to be met (see the SKILLS Act). Avoid onerous wage requirements and bureaucratic hurdles (unfortunately S.744 and SKILLS Act do this).



- ▷ The per-country cap for employment- and family-based green cards should be eliminated so long as sufficient new green card numbers are added into the immigration system.

EMPLOYMENT VERIFICATION

An effective worksite enforcement and employment verification system is the most effective way to curb illegal immigration. Both **H.R. 1772, the Legal Workforce Act**, and S.744 establish an electronic employment verification system. But H.R. 1772 imposes an unrealistic two year time frame for most employers to be using the system while doing nothing to address the current undocumented worker population. A new system must balance individual worker rights and legitimate employer interests.

DHS IS VIGOROUSLY ENFORCING IMMIGRATION LAW

The federal government has committed unprecedented resources to immigration enforcement—more than \$186.8 billion over the past 26 years. Removal orders, detentions, criminal prosecutions for status offenses, and expedited deportation practices that lack due process, have all risen dramatically as a result of administration enforcement policies. The real story of the last decade has been consistent over-enforcement—not under-enforcement—of immigration law. But the enforcement system has not been smart or efficient and has not been faithful to American principles of due process and fairness.

477,523 DETAINED

Immigration detention has increased 5-fold since 1996, reaching a record high in FY2012.

The U.S. spends \$5.6 million per day on immigration detention. Spending on detention has increased exponentially, from \$864 million 7 years ago to around \$1.9 billion today.

Source: Immigration and Customs Enforcement

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- **ENFORCEMENT-ONLY STRATEGIES**, like those contained in **H.R. 2278, the Strengthen and Fortify Enforcement (SAFE) Act**, take the country backward, not forward by:
 - ▷ *Undermining public safety.* Law enforcement leaders across the country, including the Major Cities Chiefs Association, have spoken out in opposition,
 - ▷ *Creating a confusing patchwork of state and local immigration policies.* Experiments in Arizona and Alabama have hurt, not helped, local businesses and economies. Immigration enforcement is a federal responsibility that should be administered uniformly nationwide.
 - ▷ *Costing American taxpayers billions of dollars.* The Congressional Budget Office estimates that the SAFE Act would cost taxpayers \$22.9 billion over just 4 years.
- **DETENTION:** Congress should eliminate the arbitrary “bed quota.” Detention decisions should be based on an individual assessment of risk, not on a congressionally-imposed number of detention beds. No other enforcement agency operates with a quota. Less costly and effective alternatives to detention should be expanded. DHS has requested 10 percent fewer beds.

SMART REFORMS WILL REDUCE ILLEGAL IMMIGRATION

- **E-VERIFY:** a smart and balanced system will make it nearly impossible to work and therefore live in the United States without status.
- **LEGALIZATION:** an accessible legalization process will reduce the size of the undocumented population and strengthen civic engagement.
- **LEGAL IMMIGRATION SYSTEM:** once the immigration system provides enough green cards to address the nation’s needs, illegal immigration will decline.

BORDER

Securing our border requires using smart and targeted strategies that guard our national, economic, and community interests. An effective border security plan must be based on performance metrics and measurable standards of border safety that are both achievable and fiscally responsible.

- **MEASURING SECURITY AT THE BORDER:** A resource-driven approach that emphasizes increasing border agents, fencing, and technology or infrastructure over outputs is not



effective—such as S.744, which increases Southern border spending by \$47 billion. Although not perfect, **H.R. 1417, the Border Security Results Act**, requires that resource and funding levels be determined only after DHS completes a border assessment and a strategic plan.

- **ACCOUNTABILITY AND OVERSIGHT OF CBP:** Adequate training and oversight should be mandated for all CBP staff to address the issues of use of force, misconduct, and racial profiling. Training should be increased for all CBP personnel, both at and between the ports of entry.
- **BIOMETRIC EXIT SYSTEM:** Any steps to implement a biometric exit system at air, sea, and land ports of entry must also ensure the efficient flow of commerce and travel.
- **ASYLUM SEEKERS:** Individuals at the border should receive prompt screening to determine if they have a fear of returning to their home country. Asylum seekers, many of whom are victims of violence, should not be detained.

ADMINISTRATIVE REFORM

As Congress continues to work towards a permanent legislative solution, AILA will use every tool possible to alleviate the suffering to families and businesses caused by a broken immigration system. On March 13 President Obama called for a review of DHS enforcement practices. The executive branch has the legal authority to take bold action and AILA urges DHS to implement meaningful administrative reforms until Congress passes legislation.

- **PROSECUTORIAL DISCRETION:** Prosecutorial discretion should be exercised more robustly and every case should be screened to protect families and our communities. Immigration status violations should not make someone a priority for removal.
- **AFFIRMATIVE RELIEF:** DHS could also use its legal authority to designate categories of people for whom it will provide temporary affirmative relief, as it did in 2012 with Deferred Action for Childhood Arrivals (DACA) program. This is

particularly appropriate to protect families and people who have long resided in the United States or have strong community ties.

- **PROTECTING LIBERTY:** Both detainer practices and the skyrocketing use of federal immigration detention should be dramatically curtailed in favor of more humane and less costly alternatives.
- **“BORDER”-REGION REMOVALS:** DHS should dramatically curtail expedited removal and other summary removal procedures that bypass immigration judge review and comprise more than 70 percent of removals. DHS should implement a prosecutorial discretion screening protocol for use in border regions.

ADJUDICATIONS: DHS should shift course toward a more generous interpretation of the law in immigration adjudications. The agency too often adopts the most miserly interpretation resulting in denials of valid petitions or unnecessary delays. This approach has hurt business development and growth and kept families apart who are petitioning for reunification.

OTHER EFFORTS IN THE HOUSE

- **H.R. 15 AND THE “DISCHARGE PETITION”:** In October 2013 House Democrats introduced H.R. 15, “The Border Security, Economic Opportunity, and Immigration Modernization Act.” A “Discharge Petition” was recently introduced on the bill as one tool to move immigration reform forward. AILA supports any bipartisan measure that takes concrete steps to move the country closer towards an immigration system worthy of our values.
- **HOUSE REPUBLICANS RELEASE “STANDARDS FOR IMMIGRATION REFORM”:** In January 2014 House Republicans released a set of principles that included bringing those living undocumented in the United States out of the shadows and reforming the legal immigration system.

Questions? Contact us or visit www.aila.org/advocacy ↗



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION

- **Crystal Williams**
Executive Director
cwilliams@aila.org
202.507.7651

- **Greg Chen**
Director of Advocacy
gchen@aila.org
202.507.7615

- **Bob Sakaniwa**
Senior Associate
Director of Advocacy
bsakaniwa@aila.org
202.507.7642



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