

An hourglass-shaped graphic with a globe inside. The top bulb is dark blue, and the bottom bulb is light blue. The globe is centered in the narrow neck of the hourglass. The top bulb has a dark blue cap, and the bottom bulb has a light blue cap.

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February 2, 2009

Congressional Research Service

Report RS22574

Immigration Reform: Brief Synthesis of Issue

Ruth Ellen Wasem, Domestic Social Policy Division

August 23, 2007

Abstract. U.S. immigration policy is a highly contentious issue in the 110th Congress. The number of foreign-born people residing in the United States is at the highest level in U.S. history and has reached a proportion of the U.S. population not seen since the early 20th century. There is a broad-based consensus that the U.S. immigration system is broken. This consensus erodes, however, as soon as the options to reform the U.S. immigration system are debated. Senate action on comprehensive immigration reform legislation stalled at the end of June 2007 after several weeks of intensive debate. This report synthesizes the major elements of immigration reform in the 110th Congress and provides references to other CRS reports that fully analyze these legislative elements.

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Ruth Ellen Wasem
Specialist in Immigration Policy

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Congressional Research Service

7-5700

www.crs.gov

RS22574

Summary

U.S. immigration policy is a highly contentious issue in the 110th Congress. The number of foreign-born people residing in the United States is at the highest level in U.S. history and has reached a proportion of the U.S. population not seen since the early 20th century. There is a broad-based consensus that the U.S. immigration system is broken. This consensus erodes, however, as soon as the options to reform the U.S. immigration system are debated. Senate action on comprehensive immigration reform legislation stalled at the end of June 2007 after several weeks of intensive debate. This report synthesizes the major elements of immigration reform in the 110th Congress and provides references to other CRS reports that fully analyze these legislative elements. It will be updated as needed.

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Introduction

The number of foreign-born people residing in the United States (37 million) is at the highest level in our history and has reached a proportion of the U.S. population (12.4%) not seen since the early 20th century. Of the foreign-born residents in the United States, approximately one-third are naturalized citizens, one-third are legal permanent residents, and one-third are unauthorized (illegal) residents.¹ There is a broad-based consensus that the U.S. immigration system, based upon the Immigration and Nationality Act (INA), is broken. This consensus erodes, however, as soon as the options to reform the U.S. immigration system are debated.

The 110th Congress is faced with a strategic question of whether to continue to build on incremental reforms of specific elements of immigration (e.g., border security, employment verification, temporary workers, or alien children) or whether to comprehensively reform the INA. While it appears that bipartisan as well as bicameral agreement on specific revisions to the INA may be achievable, it is also clear that many think a comprehensive overhaul of the INA is overdue and necessary.

President George W. Bush has stated that comprehensive immigration reform is a top priority of his second term, and his principles of reform include increased border security and enforcement of immigration laws within the interior of the United States, as well as a major overhaul of temporary worker visas, expansion of permanent legal immigration, and revisions to the process of determining whether foreign workers are needed. Some in the Bush Administration reportedly advocated to replace or supplement the current legal immigration preference system with a point system that would assign prospective immigrants with credits if they have specified attributes (e.g., educational attainment, work experience, language proficiency).²

The thorniest of these immigration issues remains the treatment of unauthorized aliens in the United States. Future debates will reflect the divergent views on how to address the more than 12 million illegal alien population, as well as what the level of future permanent immigration should be. The policy issues for Congress are twofold: whether and how to reform the nation's legal immigration system; and whether border security and interior enforcement provisions—as well as the resources of the immigration agencies charged with the administration and enforcement of immigration laws—are sufficient to implement comprehensive immigration reform.³

Immigration Enforcement

Immigration enforcement encompasses an array of legal tools, policies, and practices to prevent and investigate violations of immigration laws. The spectrum of enforcement issues ranges from visa policy at consular posts abroad and border security along the country's perimeter, to the

¹ CRS Report RL33874, *Unauthorized Aliens Residing in the United States: Estimates Since 1986*, by Ruth Ellen Wasem.

² CRS Report RL34030, *Point Systems for Immigrant Selection: Options and Issues*, by Ruth Ellen Wasem and Chad C. Haddal.

³ CRS Report RL33319, *Toward More Effective Immigration Policies: Selected Organizational Issues*, by Ruth Ellen Wasem.

apprehension, detention, and removal of unauthorized aliens in the interior of the country. Illustrative among these issues likely to arise in the 110th Congress are border security, worksite enforcement, alien smuggling, and the role of state and local law enforcement.⁴

Border Security

Border security involves securing the many means by which people and goods enter the country. Operationally, this means controlling the official ports of entry through which legitimate travelers and commerce enter the country, and patrolling the nation's land and maritime borders to interdict illegal entries. In recent years, Congress has passed a series of provisions aimed at strengthening immigration-related border security. Whether additional changes are needed to further control the border remains a question.⁵

Worksite Enforcement

For two decades it has been unlawful for an employer to knowingly hire, recruit or refer for a fee, or continue to employ an alien who is not authorized to be so employed. The large and growing number of unauthorized aliens in the United States, the majority of whom are in the labor force, have led many to criticize the adequacy of the current worksite enforcement measures. Efforts to strengthen worksite enforcement, however, are sometimes met by opposition of increased bureaucratic burdens for employers and fears that more stringent penalties may inadvertently foster discrimination against legal workers with foreign appearances.⁶

Alien Smuggling

Many contend that the smuggling of aliens into the United States constitutes a significant risk to national security and public safety. Since smugglers facilitate the illegal entry of persons into the United States, some maintain that terrorists may use existing smuggling routes, methods, and organizations to enter undetected. In addition to generating billions of dollars in revenues for criminal enterprises, alien smuggling can lead to collateral crimes including kidnaping, homicide, high speed flight, identity theft, and the manufacturing and distribution of fraudulent documents. Past efforts to tighten laws on alien smuggling, however, sparked opposition from religious and humanitarian groups who asserted that the forms of relief and assistance that they may provide to aliens might be deemed as the facilitation of alien smuggling.⁷

Enforcement Funding

There are ongoing questions about the adequacy of the resources given to the agencies charged with the administration and enforcement of immigration laws. Concerns have been raised that

⁴ CRS Report RL33351, *Immigration Enforcement Within the United States*, coordinated by Alison Siskin. (Hereafter, CRS Report RL33351, *Immigration Enforcement Within the United States* Additional CRS reports on enforcement of immigration policies are available at http://apps.crs.gov/cli/cli.aspx?PRDS_CLI_ITEM_ID=676&from=3&fromId=69.

⁵ CRS reports on immigration-related border security are available at http://apps.crs.gov/cli/cli.aspx?PRDS_CLI_ITEM_ID=471&from=3&fromId=69.

⁶ CRS Report RL33973, *Unauthorized Employment in the United States: Issues and Options*, by Andorra Bruno.

⁷ CRS Report RL33351, *Immigration Enforcement Within the United States*.

increased funding has been directed to border enforcement in recent years, while interior enforcement resources have not reached sufficient levels. For example, some contend that decisions on which aliens to release from detention and when to release the aliens may be based on availability of detention space, not on the merits of individual cases, and that DHS Immigration and Customs Enforcement (ICE) does not have enough detention space to house all those who should be detained. The debate is also likely to continue over whether DHS has adequate resources to fulfill its border security mission.⁸

State/Local Resources for Interior Enforcement

Notwithstanding an increase in ICE agents, many maintain that the number is still insufficient in the interior of the country. As a result, some recommend that state and local law enforcement be more engaged in enforcing immigration laws. Others question whether state and local law enforcement officers possess adequate authority to enforce all immigration laws—that is, both civil violations (e.g., lack of legal status, which may lead to removal through an administrative system) and criminal punishments (e.g., alien smuggling, which is prosecuted in the courts). Whether state and local law enforcement agencies have sufficient resources and immigration expertise as well as whether state and local funds should be used to enforce federal immigration law are also controversial.⁹

Legal Immigration

The challenge inherent in this policy issue is balancing employers' hopes to increase the supply of legally present foreign workers, families' longing to reunite and live together, and a widely-shared wish among the stakeholders to improve the policies governing legal immigration into the country. The scope of this issue includes temporary admissions (e.g., guest workers, foreign students), permanent admissions (e.g. employment-based, family-based), and legalization and status adjustment for aliens not currently eligible for legal status.¹⁰

Permanent Residence¹¹

Four major principles underlie current U.S. policy on permanent immigration: the reunification of families, the admission of immigrants with needed skills, the protection of refugees, and the diversity of admissions by country of origin. The INA specifies a complex set of numerical limits and preference categories that give priorities for permanent immigration reflecting these principles. Legal permanent residents (LPRs) refer to foreign nationals who live lawfully and permanently in the United States. During FY2005, a total of 1.1 million aliens became LPRs in the United States. Of this total, 57.8% entered on the basis of family ties. Other major categories

⁸ CRS Report RL34004, *Homeland Security Department: FY2008 Appropriations*, coordinated by Jennifer E. Lake and Blas Nuñez-Neto.

⁹ CRS Report RL32270, *Enforcing Immigration Law: The Role of State and Local Law Enforcement*, by Blas Nuñez-Neto, Michael John Garcia, and Karma Ester.

¹⁰ CRS reports on U.S. legal immigration policy are available at http://apps.crs.gov/cli/cli.aspx?PRDS_CLI_ITEM_ID=534&from=3&fromId=69.

¹¹ CRS Report RL32235, *U.S. Immigration Policy on Permanent Admissions*, by Ruth Ellen Wasem.

in FY2005 were employment-based LPRs (including spouses and children) at 22.0%, and refugees/asylees adjusting to LPR status at 12.7%.

A variety of constituencies are advocating a substantial increase in legal immigration and perhaps a significant reallocation between these visa categories. The desire for higher levels of employment-based immigration is complicated by the significant backlogs in family-based immigration due to the sheer volume of aliens eligible to immigrate to the United States. Citizens and LPRs often wait years for the relatives' petitions to be processed and visa numbers to become available. Meanwhile, others question whether the United States can accommodate higher levels of immigration and frequently cite the costs borne by local communities faced with increases in educational expenses, emergency medical care, human services, and infrastructure expansion, which are sparked by population growth.

Temporary Admissions

The INA provides for the temporary admission of various categories of foreign nationals, who are known as nonimmigrants. Nonimmigrants are admitted for a temporary period of time and a specific purpose. They include a wide range of visitors, including tourists, students, and temporary workers. Among the temporary worker provisions are the H-1B visa for professional specialty workers, the H-2A visa for agricultural workers, and the H-2B visa for nonagricultural workers. Foreign nationals also may be temporarily admitted to the United States for employment-related purposes under other categories, including the B-1 visa for business visitors, the E visa for treaty traders and investors, and the L-1 visa for intracompany transfers.¹²

Many business people express concern that a scarcity of labor in certain sectors may curtail the pace of economic growth. A leading legislative response to skills mismatches and labor shortages is to increase the supply of temporary foreign workers. While the demand for more skilled and highly-trained foreign workers garners much of the attention, there is also pressure to increase unskilled temporary foreign workers, commonly referred to as guest workers. Those opposing increases in temporary workers assert that there is no compelling evidence of labor shortages. Opponents maintain that salaries and compensation would be rising if there is a labor shortage and if employers wanted to attract qualified U.S. workers. Some allege that employers prefer guest workers because they are less demanding in terms of wages and working conditions, and that expanding guest worker visas would have a deleterious effect on U.S. workers.¹³

Legalization

The debate over comprehensive immigration reform is further complicated by proposals to enable unauthorized aliens residing in the United States to become LPRs (e.g., "amnesty," cancellation of removal, or earned legalization). These options generally require the unauthorized aliens to meet specified conditions and terms as well as pay penalty fees. Proposed requirements include

¹² CRS Report RL32044, *Immigration: Policy Considerations Related to Guest Worker Programs*, by Andorra Bruno; CRS Report RL30498, *Immigration: Legislative Issues on Nonimmigrant Professional Specialty (H-1B) Workers*, by Ruth Ellen Wasem; and CRS Report RL31146, *Foreign Students in the United States: Policies and Legislation*, by Chad C. Haddal.

¹³ CRS Report RL33977, *Immigration of Foreign Workers: Labor Market Tests and Protections*, by Ruth Ellen Wasem; CRS Report 95-408, *Immigration: The Effects on Low-Skilled and High-Skilled Native-Born Workers*, by Linda Levine.

documenting physical presence in the United States over a specified period; demonstrating employment for specified periods; showing payment of income taxes; or leaving the United States to obtain the legal status. Using a point system that credits aliens with equities in the United States (e.g., work history, tax records, and family ties) would be another possible avenue. A corollary option would be guest worker visas tailored for unauthorized aliens in the United States. There are also options (commonly referred to as the DREAM Act) that would enable some unauthorized alien students to become LPRs through an immigration procedure known as cancellation of removal.¹⁴

Refugee, Asylee, and Humanitarian Concerns

The policy question here is how to establish an appropriate balance among the goals of protecting vulnerable and displaced people, maintaining homeland security, and minimizing the abuse of humanitarian policies. Specific topics include refugee admissions and resettlement, asylum reform, temporary protected status, unaccompanied alien children, victims of trafficking and torture, and other humanitarian relief from removal.¹⁵

Alien Rights and Responsibilities

The scope of rights, privileges, benefits, and duties possessed by aliens in the United States is likely to be a significant issue in the 110th Congress. The degree to which such persons should be accorded certain rights and privileges as a result of their presence in the United States, along with the duties owed by such aliens given their legal status, remains the subject of intense debate. Specific policy areas include due process rights, tax liabilities, military service, eligibility for federal assistance, educational opportunities, and pathways to citizenship.¹⁶

Legislative Action on Comprehensive Immigration Reform

109th Congress

During the 109th Congress, both chambers passed major overhauls of immigration law but did not reach agreement on a comprehensive reform package. In December 2005, the House passed H.R. 4437, the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005, which had provisions on border security; the role of state and local law enforcement in immigration enforcement; employment eligibility verification; and worksite enforcement, smuggling, detention, and other enforcement-related issues. H.R. 4437 also contained provisions on unlawful presence, voluntary departure, and removal. In May 2006, the Senate passed S. 2611, the Comprehensive Immigration Reform Act of 2006, which combined provisions on enforcement

¹⁴ CRS Report RL33863, *Unauthorized Alien Students: Issues and "DREAM Act" Legislation*, by Andorra Bruno.

¹⁵ CRS reports on U.S. refugee and asylum policy are available at http://apps.crs.gov/cli/cli.aspx?PRDS_CLI_ITEM_ID=2643&from=3&fromId=69.

¹⁶ CRS reports on aliens' rights, benefits, and responsibilities are available at http://apps.crs.gov/cli/cli.aspx?PRDS_CLI_ITEM_ID=2643&from=3&fromId=69.

and on unlawful presence, voluntary departure, and removal with reform of legal immigration. These revisions to legal immigration would have included expanded guest worker visas and increased legal permanent admissions. S. 2611 also would have enabled certain groups of unauthorized aliens in the United States to become LPRs if they paid penalty fees and met a set of other requirements.¹⁷

110th Congress

Senate action on comprehensive immigration reform legislation stalled at the end of June 2007 after several weeks of intensive debate. The bipartisan compromise was negotiated with Bush Administration officials and introduced in the Senate on May 21, 2007. The bill includes provisions aimed at strengthening employment eligibility verification and interior immigration enforcement, as well increasing border security. It would substantially revise legal immigration with a point system and expanded temporary worker programs. Unauthorized aliens in the United States would be able to become LPRs if they meet certain requirements, pay penalty fees, and meet other requirements. A modified version of that compromise (S. 1639) was introduced June 18, 2007, but failed a key cloture vote on June 28, 2007. The House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law held multiple hearings weekly in April, May, and June on various aspects of comprehensive immigration reform.

Author Contact Information

Ruth Ellen Wasem
Specialist in Immigration Policy
rwasem@crs.loc.gov, 7-7342

¹⁷ CRS Report RL33125, *Immigration Legislation and Issues in the 109th Congress*, coordinated by Andorra Bruno.