

Reframing the Immigration Debate

(Fourth of a series)

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On October 18, the Senate Judiciary Committee conducted a hearing on immigration reform. Among those who testified at the hearing were Senator John Cornyn, Homeland Security Secretary Michael Chertoff and Labor Secretary Elaine Chao.

The Senate hearing is a significant development insofar as it brings into sharp focus the finer points in the debate as to what direction immigration reform should take. The good news is that lawmakers are apparently ready to roll up their sleeves and fix our terribly broken immigration system. But how will this be done?

While everyone seems to be in agreement that national security and the need for a stable supply of essential workers are important components of immigration reform, there is a nagging persistence upon tough enforcement measures against illegal immigration.

“Enforcement Only” Approach

Senator Cornyn testified that he does not believe an “enforcement only” approach is the best policy. Yet, the Comprehensive Immigration Reform bill he co-sponsored with Senator John Kyl, provides for more immigration judges and detention beds. It also provides for the mandatory departure of undocumented migrants, which will most likely end up being an exercise in futility.

In the meantime, Secretary Chertoff ominously announced this administration will “return every single illegal entrant—no exceptions.” He also sounded off what we fear to be the underlying principle of the Bush Administration’s approach to illegal immigration, that is, an “aggressive removal program will deter illegal immigration attempts.”

Secretary Chao, for her part, pushed for the guest worker program but was silent about the adjustment of status to permanent residency or eventual citizenship.

The immigration reform debate seems to turn on the pivot of earned adjustment. True enough, it is a highly sensitive issue because our lawmakers, who are first and foremost politicians, do not want to appear too harsh against undocumented migrants. Neither would they want to appear like they are coddling lawbreakers. But appearances aside, why the need to tiptoe around the issue of earned adjustment?

Symptom of a Broken System

The reluctance to provide earned adjustment is actually premised on the view that undocumented migrants are lawbreakers. And the answer to breaking immigration law is simple and swift—deportation.

The reality, particularly with respect to our immigration system today, is not that simple. We need to rethink why illegal immigration occurs and reframe the immigration reform debate accordingly.

Illegal immigration is a symptom of our broken immigration system, not the other way around. People enter the US illegally or overstay their visa because the immigration system leaves them with no other choice.

The point is, undocumented migrants are themselves victims of our broken immigration system. What we actually have in place right now is an “enforcement only” approach.

As Secretary Chertoff himself testified, several million illegal aliens had been deported since President Bush took office in 2001. He also said yearly immigration enforcement spending increased by \$1 billion. And where dysfunctional laws are being enforced, it should come as no surprise that illegal immigration continues.

What else could you expect from families who have been waiting 20 years for their visa?

Would you expect foreign workers to pass up the opportunity to earn good money for their children who are wallowing in poverty? Would you expect US businesses to survive without foreign workers who are willing and able to take on jobs that American workers are not willing to perform?

Having sacrificed life and limb to pursue the American dream, would undocumented migrants really sabotage their efforts by being a threat to national security? With life as an undocumented migrant so difficult, wouldn't these people be the first to seek legalization if the opportunity to do so presented itself?

It would be simplistic and counterproductive to formulate the immigration reform debate as a contest between more visas versus more enforcement. Increased visa numbers do not cancel out stronger enforcement measures. One complements the other, both must be pursued simultaneously if immigration reform is to be comprehensive and effective.

This wholistic approach to immigration is what distinguishes the Secure America and Orderly Immigration Act (also the “McCain-Kennedy Bill”) from the Cornyn-Kyl Bill and other proposals. It does not stress one aspect at the expense of the other, rather, it combines strong enforcement measures with widened immigration channels, thereby making it the most viable foundation for genuine immigration reform.

Guest Worker Program

Both contending bills have their own guest worker proposals for undocumented workers and those who wish to enter the US.

The McCain-Kennedy Bill creates the H-5B program for undocumented migrants with an initial period of stay of six (6) years. The guest worker may then apply for adjustment of status.

It also provides for an H-5A program for aliens who wish to enter and work in the US. The H-5A visa would be valid for 3 years and renewable for a total stay of six years. The initial cap for H-5As is 400,000, which may be adjusted based on demand. The H-5A worker may self-petition for adjustment of status after four years of work.

In contrast, the Cornyn-Kyl Bill creates a Deferred Mandatory Departure program whereby undocumented migrants are required to return to their home countries within five years. Failure to depart will render the alien ineligible for immigration relief or benefit for ten years.

After the first year of the bill's enactment, the alien will be required to pay a penalty of \$2,000 per year that s/he remains in the US. Only employers authorized to participate in this program may employ DMD aliens. It does not provide for earned adjustment.

The bill creates the W visa temporary worker program for guest workers outside the US. The W visa would be valid for 2 years renewable 3 times for a total maximum stay of six years. Failure to leave the US at the end of 6 years would permanently bar the alien from immigration relief or benefits.

As with the DMD program, employers would have to be authorized to participate in the W visa program before they can be allowed to employ W visa holders. The bill does not provide a cap for the W visa. Neither does it have provisions for adjustment of status. Only workers from countries that have entered into bilateral agreements with the US are allowed into the DMD and W programs.

Backlog Reduction

The McCain-Kennedy Bill tackles the tremendous visa processing backlogs that have kept families apart for several years. Immediate family members will be exempted from the 480,000 annual limit on family immigration visas. It will not only increase the yearly number of employment-based immigration visas from 140,000 to 290,000, it will also provide for the recapture of unused visa numbers. Per-country limits to family-based and employment based immigration will also be increased.

On closer scrutiny, the Cornyn-Kyl Bill has little to offer by way of backlog reduction and the effort to reunify families. At most, it increases the per-country limits for family based and employment-based immigration and provides for the recapture of unused visa numbers. It merely provides for a task force that will study the impact of visa processing delays.

Border Security Measures

The Cornyn-Kyl Bill stands out for its strong-arm strategy with respect to border security. It provides for 10,000 Border Patrol Agents, 1,250 Customs and Border Protection Officers, and the expansion of a removal program at the southern border “as soon as operationally possible.” Aliens who fail to leave the US at the end of their authorized stay will face the cancellation of all their visas under this bill.

The border security provisions of the McCain-Kennedy Bill presuppose an expanded concept of borders, one that goes beyond the physical boundaries that separates the United States from its neighbors. The bill mandates enhanced information-sharing and coordinated action at all levels of government, from federal to state to local. The bill also provides for the creation of a Border Security Advisory Committee that will provide recommendations regarding security and enforcement issues. The Secretary of State will be mandated to take a leading role in the establishing a North American security perimeter.

The lines have been drawn and the debate, hopefully, will begin in earnest. The American public, including numerous immigrant, faith and business groups nationwide, have already voiced out their support for comprehensive immigration reform. We need immigration reform and we need it now.