
Forging Consensus on Immigration



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The Bipartisan Framework for Comprehensive Immigration Reform released earlier this year by four Democratic and four Republican senators has been the basis of virtually all the serious discussions about immigration reform going on in Washington these past several weeks. Substantial disagreement has now surfaced over proposed limits on family-based visas as well as over ways to bring in greater numbers of unskilled workers. Yet one topic that may prove to be one of the more nettlesome has thus far received little attention: While the Framework links legalization and eventual naturalization of undocumented immigrants almost entirely to border controls, it neglects what has long been the weakest aspect of immigration enforcement—the workplace. Surprisingly, the Gang of Eight’s many critics have yet to focus on this aspect of their Framework.

Four years ago, as immigration reform fell off the congressional agenda, the Brookings-Duke Immigration Policy Roundtable grappled with precisely these issues. Ours was a deliberative effort involving twenty individuals from the left, right and center—think tank analysts, academics, political and policy entrepreneurs, former government officials, and community leaders—who saw immigration from divergent, even conflicting perspectives. Over the course of a year, we convened regularly and explored our differences in order to determine where we could come together on specific policy proposals. In October 2009 we issued our report, *Breaking the Immigration Stalemate*. Its findings and recommendations are highly relevant to the Senators’ new push to forge consensus behind comprehensive immigration reform.

When their Bipartisan Framework asserts that “the United States must do a better job of attracting and keeping the world’s best and brightest,” it comes to the same conclusion as did the Brookings-Duke Roundtable—America’s economy demands a policy that supports high-skill immigration. Yet unlike the Senators, we took the next step and considered how to “pay for” those additional newcomers in a political environment where any increase in overall numbers of immigrants meets entrenched resistance. So while the Roundtable called for an additional 150,000 permanent resident visas for skilled workers, we also urged elimination of the

controversial Diversity Visa Program, which each year awards 50,000 green cards to the winners of a lottery that the GAO has concluded is vulnerable to fraud.

And we didn't stop there. As further down-payment on additional visas for skilled workers, the Roundtable recommended that family-sponsored admissions be limited to members of the nuclear families of legal permanent residents and citizens. So while we reaffirmed family unification as a bedrock principle of our immigration policy, we urged elimination of green cards for the siblings as well as the adult sons and daughters of U.S. citizens.

Any such changes in existing family preferences are regarded as the third rail of immigration politics. But of course none of the Roundtable members had to worry about getting re-elected to office. Nevertheless, it was not easy for us to confront this core element of our immigration policy.

So it should be no surprise that the Bipartisan Framework has nothing to say on this topic. But as I have indicated, limiting family preferences has now surfaced in discussions on Capitol Hill—and provoked a strong negative response from two dozen members of the Congressional Asian Pacific American Caucus. But if we are genuinely committed to “help build the American economy,” as the Framework puts it, this politically risky trade-off can't be avoided.

The other difficult issue addressed by the Roundtable was temporary, low-skilled workers—so-called “guest workers.” The Bipartisan Framework avoids using this term, but clearly has some kind of guest-worker program in mind when it proposes legislation that would “allow more lower-skilled immigrants to come here when our economy is creating jobs, and fewer when our economy is not creating jobs.” The Framework's proposal would “permit workers who have succeeded in the workplace and contributed to their communities over many years to earn green cards.” Less successful workers would presumably be required to return home.

The details of any such program have, in effect, been delegated by the Gang of Eight to informal negotiations between the American Federation of Labor and the U.S. Chamber of Commerce. These have been protracted and difficult—and apparently not very successful. Yet the political appeal of guest workers is obvious: they meet the needs of employers and, as the term implies, leave when their services are no longer needed.

At least that's the theory. Yet in practice it has seldom worked out that way, which is why the Immigration Policy Roundtable rejected guest worker programs outright. As we put it, such “programs obfuscate the inevitable reality that such workers seldom return home permanently.” In this regard, nothing has changed over the past four years, and any genuine reform of our immigration policy must confront this fact.

Yet the Brookings-Duke Roundtable also recognized that the demand for low-skilled workers is not going to disappear. So we proposed a system of non-renewable provisional visas valid for five years. At the end of that period, these individuals would have the option either of returning to their country of origin or applying for permanent status. Our goal here was to face up squarely to the labor needs of 21st century America while emphasizing the importance of policies—quite unlike guest worker programs—premised on permanent residency leading to citizenship. Critical to our proposal was the stipulation that the number of such additional permanent residents would have to be reconciled with overall immigration priorities and numerical limits.

Let's now turn to border security, the first and most salient pillar of the Bipartisan Framework. The Gang of Eight asserts that “we will demonstrate our commitment to securing our borders and combating visa overstays by requiring our proposed enforcement measures be complete before any immigrant on probationary status can earn a green card.” As many have noted with concern, the Framework then stipulates that border security would be monitored and certified by a Southwest border commission “comprised of governors, attorneys general, and community leaders.”

To be sure, linking any form of legalization to strong enforcement at the border is important because any such effort will set off a renewed influx of illegal immigrants seeking to take advantage of it. But as many analysts have noted, over the past two decades we have already invested heavily in border enforcement. What we have neglected is enforcement at the workplace, which would make it much more difficult for the unauthorized to find employment. As the Framework itself emphasizes, “undocumented immigrants come to the United States almost exclusively for jobs.” Not surprisingly then, it concludes that “dramatically reducing future illegal immigration can only be achieved by developing a tough, fair, effective and mandatory employment verification system.” Nevertheless, when push comes to shove, the Gang of Eight prioritize border security over workplace enforcement and make legalization exclusively contingent on the former.

By contrast, the Immigration Policy Roundtable stipulated that “enforcement at the workplace must be the predicate for any legalization program.” Accordingly, we supported significantly enhanced workplace verification procedures. So does the Bipartisan Framework, which calls for “a tough, fair, effective and mandatory employment verification system.” But we pushed further and stipulated that legalization could *only* begin once the effectiveness of such workplace enforcement was verified by the Government Accountability Office. Subsequent verification by GAO could then be used to condition continued expansion of legalization. In other words, we advocated not a one-time fix but an on-going process requiring careful sequencing of enforcement and legalization.

Particularly in today's rancorous and polarized environment, the Roundtable's emphasis on verification of workplace enforcement by an established and rela-

tively non-controversial agency like GAO is much less fraught—both technically and politically—than the Bipartisan Framework’s reliance on verification of enforcement along a 2000-mile border by a commission that would be dominated by border-state officials—and that does not yet exist. In contrast, the Roundtable’s approach could boost prospects of a bipartisan deal by reassuring conservatives that illegal immigration won't pick up again as the economy recovers, as well as reassuring liberals that legalization won't be held hostage to border-state judgments as to when that border is sealed.

Unlike U.S. lawmakers, of course, our group wasn’t lobbied by the powerful interests that seek to influence legislation: businesses, organized labor, ethnic activists, and both restrictionist and pro-immigrant advocacy groups. Nonetheless, what we learned in searching for common ground could prove highly useful now that reform is back on the table.

Above all, the billions that have been spent on border enforcement, while necessary, have reached the point of diminishing returns. A more promising approach to preventing any future influx of illegal immigrants is to link stronger workplace enforcement with legalization, with the kind of "trust but verify" sequencing that the Brookings-Duke Immigration Policy Roundtable recommended.

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