

Analysis: R-S-M-D-F Conceptual Proposal for Immigration Reform

I. ACHIEVING OPERATIONAL CONTROL OF AMERICA’S BORDER TO PREVENT FUTURE ILLEGAL IMMIGRATION

A. Securing the Border First Before any Action can be Taken to Change the Status of People in the United States Illegally

Summary:

- Sets benchmarks for border security, including number of border patrol agents and technology
- Requires that benchmarks be reached before any legalization program can begin

The Good:

- Nothing

Concerns/Criticism:

- Must come with a commitment that these benchmarks will not move and that Congress will fully fund agencies to ensure that these benchmarks are met.
 - How will enforcement be handled for those who are *prima facie* eligible for legalization but can’t because govt benchmarks haven’t been met yet?
 - What happens if X years pass and benchmarks aren’t met?
 - Will benchmarks include implementations or resources set aside for implementations?
- Benchmarks must be clearly defined before immigrant organizations can endorse these requirements.
 - How many more agents?
 - What does it mean to “improve, technology, infrastructure, and resources?”

B. Further Fortification of America’s Border Enforcement Capability

Summary:

- Increases border security beyond the benchmarks laid out in Section I(A).
 - Includes personnel and equipment

More Detail:

- After benchmarks border will be further fortified. Increase in border patrol agents, officers at port of entry, installation of ground sensors.
- Upgrades in technology for border patrol—SUVs, surveillance equipment, use of Department of Defense equipment at border
- Upgrades at Ports of Entry including Enhanced Connectivity with government fingerprint databases at Port of Entry
- Training and resources for CBP

The Good:

- Focusing ICE and other enforcement programs on criminal activities.
- Border Community Liaison Office
- Training for CBP addressing children and victims of human trafficking and on accomplishing border enforcement without racial profiling.

Concerns/Criticism:

- What is the “border patrol auxiliary unit?” Will they receive the same training as regular CBP agents? Who is responsible for their actions? Will they be pulled from local law enforcement? What qualifications must they meet? Who is responsible for selecting them?
- What kind of Department of Defense Equipment?
- “Border Patrol Forward Operating Bases”

C. Other Necessary Reforms

Summary:

- Grab bag of proposals, including the creation of a bipartisan commission to monitor border security and make recommendations to Congress

More Detail:

- Bipartisan Commission on southern and northern border will make recommendations within 12 months and Congress will vote.
- States and municipalities will be prohibited from enacting their own rules and penalties relating to immigration, which could undermine federal policies.
- Border will work to preserve national parks and refuges
- Grants to local towns and counties to assist in the transfer of unauthorized immigrants to Law enforcement.
- Border Patrol Community Liaison Office established and complaint process created.
- Communities will be given ability to create Alternatives to Detention.
- Custody standards at border patrol stations, holding cells, and check points.

The Good:

- Increased resources for immigration courts
- Environmental protections at the border
- Creates Border Patrol Community Liaison Office and complaint process
- Standards at border patrol stations.
- Alternatives to Detention

Concerns/Criticism:

- Alternatives to Detention should not only apply to border communities.
- How do border communities create and implement their own alternatives to detention programs? Why is this on the community level?
- What constitutes “undermin[ing] federal policies?”
 - Is this enforcement issues only (ex: Arizona)?
 - Does it include limiting/expanding access to benefits? Sanctuary cities? Would MA be in trouble for allowing immigrants access to housing?

II. DETECTION, APPREHENSION, AND REMOVAL OF UNLAWFULLY PRESENT PERSONS IN THE UNITED STATES

Summary:

- Various proposals to improve internal (rather than border) enforcement of immigration law.

More Detail:

- Implement US-VISIT, which will enhance our capabilities to detect, apprehend, and remove persons who enter US unlawfully or overstay visas
- DHS will initiate removal proceedings against every alien who enters on a temporary nonimmigrant visas and overstays
- All criminals in federal, state, and local prisons will be checked for lawful status and deported if here illegally.
- Zero tolerance for Gang Members
- Convicted Sex offenders cannot petition to bring in foreign nationals
- Greater authority for DHS to seize boats and other vessels used for trafficking of drugs, guns, and people
- New crimes created for trafficking and misuse of passports and increased penalties for selling false documents.
- States reimbursed for costs of incarcerating and transporting aliens
- Foreign nationals must submit biometric info to US government
- Penalties (civil sanctions and prison sentences) for unscrupulous employers who exploit unauthorized labor
- Maintains 287(g) program but requires participants to collect and maintain records that shows that they comply with federal law

Detention, Refugees, and Asylees

- Uniform standards for detention
- Charge must be filed within 48 hours at nearest immigration court
- Custody considerations for children before detainee transferred
- Government will give due consideration to the best interest of the child concerning detention, release, or transfer of parent
- Refugees and asylee process is streamlined. Become LPRs when granted refugee or LPR status.
- New custody options for refugees and other vulnerable populations.
- Children and vulnerable populations can obtain expedited adjudication

The Good:

- DHS will be required to file NTAs with the immigration court closest to where the person was arrested.
 - **Bad:** could transfer right afterwards though
- Minimum standards of detention
 - **Bad:** need details, what standards?
- Victims of labor violations will be provided with incentives to cooperate with law enforcement (what incentives?)
- No increase in numbers of detainees or deportees.
- Protections for vulnerable populations in detention.
- Child custody considerations for detainees.
- Streamlined process for refugees and asylees.
- Improved data collection and maintenance under 287(g) programs

Concerns/Criticism:

- What's needed to complete implementation of Entry-Exit system?
 - How many years will this take?
 - Is anything contingent on completion?
- Will people in jails (as opposed to prisons) be subject to checks as well?
- What does it mean to "encourage individuals here illegally to depart voluntarily"?
 - Are they talking about voluntary departure, or departure outside of the court system?
 - What kind of incentives are possible?
- Will the improved data collection provide enough oversight over 287(g)?
- While the bill limits transfers, it does not provide a broad enough set of criteria to consider (only have to consider child's welfare)
 - Need to consider legal representation, other family, community, etc.

III. ENDING ILLEGAL EMPLOYMENT THROUGH BIOMETRIC EMPLOYMENT VERIFICATION

Summary:

- Creates a new employment eligibility verification system that relies on biometric social security cards
 - All American workers would be required to use the new card

More Detail:

- Within 18 months of enactment, the Social Security Administration will begin issuing machine readable fraud resistant biometric social security cards.
- Cards will have: biometric identifiers; security features
- employer will not have access to overall biometric database—will verify locally
- Card will only be used to serve as work authorization.
- It will be unlawful for any person, corporation, law enforcement, local government, or other entity to require or ask for an individual to produce their card except for work authorization purposes.
- BELIEVE system will be implemented fully with six years
- Industries with high numbers of unauthorized immigrants will implement sooner
- Private contractors can offer BELIEVE services if employer does not want to obtain electronic scanning abilities after six years.
- Employees who are not verified have 30 days to file an administrative review and 30 days follow a disapproval to file a judicial review.
- Employees will be provided back wages when a determination is reached that the disapproval was not caused by employee error.
- Employee will have private right of action against employer if it is determined it is fault of employer via negligence.
- Public education campaign on BELIEVE
- Report to congress 24 months after full implementation to ensure that it is 99 percent accurate or make recommendations to get the system to 99 percent.
- GAO report every two years following enactment.
- Employment Certification Advisory Council.
- Strict penalties for those who misuse BELIVE system.
- Increases civil monetary penalties by 300 percent for knowingly hiring someone unauthorized and includes penalties including imprisonment for repeat offenders and those who engage in a pattern.
- Safe harbor for employers who hire through a subcontractor.
- Believe will be paid for by non-citizens fees and business entities.
- Cost for the entire national system is placed on the backs of non-citizens applying for these cards

The Good:

- Clearly states that the card can only be used to verify work eligibility. Any other use is unlawful (including the verifying status).
- Employees will have a private right of action against employers when a determination is reached that the disapproval was caused by an act or negligence on the part of the employer.
- Administrative and judicial review process.
- Maintains Hoffman vs Plastics—protections for unauthorized workers.
- Increased civil monetary penalties for violating anti-discrimination protections
- Prohibition against deducting wages paid to unauthorized workers

Concerns/Criticism:

- Cost for the entire national system is placed on the backs of non-citizens applying for these cards
 - What are the fees set at? What factors will be considered for raising the fees? How makes the decision on when, how much to raise the fees?
- Hard deadline (5 years) doesn't take into account the problems that will be encountered in implementation or the need to correct the problems in the database.
 - Newly created Biometric Enrollment, Locally-stored Information, and Electronic Verification of Employment (BELIEVE) System will be difficult to create, fill with data, and correct errors within only 5 years. E-Verify has been around for over a decade and is still riddled with inefficiencies and incorrect data.
- This proposal allows private sector providers to verify an employee's information if the employer has not acquired the necessary equipment by the 6 year deadline. Why farm this work out to for-profits? The proposal also allows for local government offices to verify this information. Why duplicate this work? Why not just have the local government offices have the capability?
 - Best to have SSA so a person can start to address issues right there and then.
- What enforcement guarantees are there that employers will comply with the law? Simply not right to make employers enforce immigration law because they are free to abuse the system. Lots of problems already exist with E-Verify and we'll see the same problems here:
 - Verification no sooner than the date the employee starts
 - Selective use of BELIEVE
 - Willfully and knowingly using the information in a manner other than that prescribed by law
 - Termination or taking any adverse employment action unless authorized or required to do so by this Act.
- What is the review process? Who are appeals going to?
 - Which court will have jurisdiction to review the final administrative decision?
- 99% accuracy would still negatively impact over 1 million US workers.
 - Naturalized citizens are much more likely to have incorrect information in their social security database. Enacting a law that would disproportionately negatively impact them would be a violation of their equal protection right to work (possibly).
- Immigrant organizations should be included in the Employment Verification Advisory Panel

IV. REFORMING AMERICA'S LEGAL IMMIGRATION SYSTEM TO MAXIMIZE AMERICAN ECONOMIC PROSPERITY

A. High Skilled Immigration

Summary:

- Green cards immediately available to foreign students with advanced degrees from US in science, technology, engineering, or math and who have an offer of employment
- Eliminates per-country employment immigration caps
- Adds fraud and abuse protections to H1-B program including US worker protections
- Adds fraud and abuse protections to L-1 program including wage rates and working conditions

The Good:

- Green cards will be immediately available to foreign students seeking advanced degrees in the US
- Adds increases protections against fraud for H1-B workers and wage protections for L-1s.

Concerns/Criticism:

- Does not increase protections against abusive employers for high skilled workers.

B. Immigration of Low Skilled Workers

Summary:

- Reforms H-2A and H-2B temporary worker systems and adds a new H-2C category

More Detail:

- Includes AG Jobs
- H2-B reformed to eliminate fraud and abuse.
- H2-B workers can file a civil action against employer
- DOL will be given authority to ensure compliance of employers and ensure that employers pay wage, transportation, and other expenses.
- Adds protections for US workers: job posting; specific requirements for paying higher wages
- Creates an H2-C visa program for non-seasonal, non-agricultural workers. It is a 3 year visa that can be renewed twice. It is portable after one year and has path to LPR. Numbers of H2-C visas will be tied to economy.
- If cap has been met, an employer can pay an additional fee to USCIS, increased wage for position, and do additional recruiting and then can obtain a HC-5 worker.
- US worker displaced by HC-5 worker shall have redress.
- Creates Commission on Employment-Based Immigration that can only make non-binding recommendations to Congress.
- Commission can declare an emergency and Congress must vote.

The Good

- Includes Ag Jobs
- A Guest worker program with a path to LPR status, portability after one year, and same protections as US worker.

Concerns/Criticism:

- Commission on Employment-Based Immigration cannot make binding recommendations but can declare an emergency and require a vote from Congress. How will declaring an emergency work?

C. Promoting Family Reunification

Summary:

Clears the family backlogs in eight years.

More detail:

- Recapture of visas lost to bureaucratic delay
- Family backlog cleared in eight years
- Spouses and children of LPRs now immediate relatives.
- Countries with long backlogs like the Philippines, China, Mexico—see family admissions increase from 7-10%
- Same sex partners can apply for LPR
- Includes widows and orphans
- Exempts children of Filipino war veterans

The Good

- Eliminates backlogs after 8 years (could be shorter)
- Switches spouses and children of LPRs to “immediate relative” category
- Raises per country limits from 7 to 10 percent of total admissions
- Broadens family-based immigration:
 - Widows and orphans
 - Permanent partners
 - Stepchildren & adoptive children

Concerns/Criticism:

No mention of derivative family benefits
Returns to old family-based cap limit after elimination of backlogs
No expansion of family-based visas.
Clearing of backlogs could be shorter.

V. MANDATORY REGISTRATION, ACCEPTANCE OF RESPONSIBILITY, AND ADMINISTRATION OF PUNISHMENT FOR UNAUTHORIZED ALIENS PRESENT IN THE UNITED STATES

Summary:

- Establishes a legalization program to address the 10-15 million undocumented immigrants in the United States

More Detail:

- Must be present by introduction of bill.
- Phase One:

Applicants will register and be screened. Eligible applicants will be given an LPI (Lawful Prospective Immigrant) status and given a biometric enabled credential.

- Complete an application with basic biographical and biometric info
- Pass terrorism, criminal history, and checks
- Pay fees, civil penalties, and taxes
- Be continually present since date of enactment

Ineligible: Felon, 3 misdemeanors; those present as an authorized immigrant or non-immigrant status; undocumented immigrants who enter after bill introduction

Spouses and children living abroad of LPIs also eligible to apply

- Phase 2: After 8 years (when backlogs are cleared) LPIs can apply to become LPRs. They must demonstrate:
 - Basic Citizenship Skills
 - English language skills
 - Continuous residence in US
 - Updated security check
 - Payment of all taxes, fees, and civil penalties

The Good:

- Legalization!!
- Spouses and children living abroad will be eligible for legalization.
- Incorporates DREAM in whole

Concerns/Criticism:

- Places people at the back of the line
- Will crimes involving status count?
- Are those in the legalization process the first to receive biometric SS cards?
- No description of fees or penalties
- Do the same citizenship exemptions for language and civics apply to the requirements for adjusting to LPR status?
- What does family abroad LPI process look like?

VI. REFORMS DESIGNED TO ENHANCE EFFICIENCY AND EFFECTIVENESS IN AMERICA'S IMMIGRATION SYSTEM

Summary:

- Grab bag of provisions to expand visa categories and make technical changes

More Detail:

- Religious worker visa program made permanent
- Adjust minor visa categories-ex fashion model.
- Allows for foreign nurses and physical therapists to enter US to alleviate shortages and foreign doctors to work in underserved areas
- EB-5 investor program will be permanent.
- Grants to State Courts to assist LEP individuals
- Extensive nationwide immigrant integration programs

The Good:

- Establishes “extensive nationwide immigrant integration programs”

Concerns/Criticism:

- Immigrant Integration is an afterthought.