



WHERE DO WE GO FROM HERE: THE NEW FACE OF COMPREHENSIVE IMMIGRATION REFORM

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By [Gary Endelman](#) and **Cyrus D. Mehta**

It may have taken the Bolsheviks 10 days to shake the world but the presidential election last week did it in one. The political calculus on comprehensive immigration reform changed utterly and likely forever.

Hispanic voters accounted for 10% of voters on November 6th, reaching double-digits for the first time, and President Obama won them by a 71-28% margin. The number of registered Latinos soared by 26% in the past 4 years to an astonishing 12.2 million. The Hispanic rejection of Governor Romney contrasts sharply with the 44% of the Hispanic vote won by former President Bush in 2004. The latter pushed for CIR in 2007 and remains the only President ever to make a televised speech on immigration from the Oval Office. Moreover, the last time that CIR passed the US Senate in 2006, 23 of the 62 Aye Votes, came from Republicans, including one from then Senate Majority Leader Bill Frist of Tennessee.

Nor have Hispanics always been in love with President Obama under whose administration deportations reached record levels. Despite his 2008 promise to move on CIR, the President had done precious little until this summer, something he had to admit under tough questioning at a forum sponsored by the Spanish-language Univision network. Then came the President's Deferred Action for Childhood Arrivals (DACA) initiative and the momentum for change took off. On the day after the election, an ABC News/Washington Post poll revealed a majority of all Americans (57%) backed a pathway for citizenship to bring the undocumented in from the shadows; among Hispanics the notion was even more popular (82%). Fox News commentator Sean Hannity proclaimed that his position on CIR had "evolved"; Arizona Governor Jan Brewer

who rode to re-election on her state's nativist immigration law now thought that CIR was "fine and dandy"; libertarian Senator Rand Paul announced an intent to make CIR a key plank in his run-up for 2016 and old-time immigration stalwarts like John McCain and Lindsey Graham who had seemingly found their old views radioactive in recent years now rediscovered them, eager to join in bipartisan CIR discussions with their Democratic colleagues.

In his first news conference after his reelection on November 14, 2012, President Obama [expressed confidence that he could pass an immigration reform bill](#) early in his second term. He said that we should "seize the moment" buoyed by the strong endorsement he received from Latino voters favoring him over Mitt Romney.

Here is a transcript of the section of the news conference dealing with immigration:

Q: And also, what lessons, if any, did Democrats learn from this last election and the Latino vote?

OBAMA: Well, I think what was incredibly encouraging was to see a significant increase in Latino turnout. This is the fastest-growing group in the country and, you know, historically what you've seen is Latino vote — vote at lower rates than the broader population. And that's beginning to change.

You're starting to see a sense of empowerment and civic participation that I think is going to be powerful and good for the country. And it is why I'm very confident that we can get immigration reform done. Before the election, I had given a couple of interviews where I predicted that Latino vote was going to be strong and that that would cause some reflection on the part of Republicans about their position on immigration reform. I think we're starting to see that already.

I think that's a positive sign. This has not historically been a partisan issue. We've had President Bush and John McCain and others who have supported comprehensive immigration reform in the past. So, we need to seize the moment.

And my expectation is that we get a bill introduced and we begin the process in Congress very soon after my inauguration.

OBAMA: And, in fact, some conversations I think are already beginning to take

place among senators and congressmen and my staff about what would this look like. And when I say comprehensive immigration reform, it's very similar to the outlines of previous immigration reform. I think it should include a continuation of the strong border security measures that we've taken. Because we have to secure our border. I think it should contain serious penalties for companies that are purposely hiring undocumented workers and — and taking advantage of them.

And I do think that there should be a pathway for legal status for those who are living in this country, are not engaged in criminal activity, are here to — simply to work. I've — it's important for them to pay back taxes. It's important for them to learn English. It's important for them to potentially pay a fine, but to give them the avenue whereby they can resolve their legal status here in this country, I think is very important. Obviously making sure that we put into law what — the first step that we've taken administratively dealing with the DREAM Act kids is very important as well.

The one thing that I'm — I'm very clear about is that young people who are brought here through no fault of their own, who have gone to school here, pledged allegiance to our flag, want to serve in our military, want to go to school and contribute to our society, that they shouldn't be under the cloud of deportation. That we should give them every opportunity to earn their citizenship. And so, you know there are other components to it, obviously. The business community continues to be concerned about getting enough high-skilled workers.

And I am a believer that if you've got a PhD in physics, or computer science who wants to stay here, and start a business here, we shouldn't make it harder for them to stay here, we should try to encourage him to contribute to this society. I think that the agricultural sector, obviously has very specific concerns about making sure that they've got a workforce that helps deliver food to our table. So there're gonna be a bunch of components to it, but I think whatever process we have needs to make sure border security's strong, needs to deal with employers effectively, needs to provide a pathway for the undocumented here, needs to deal with the DREAM Act kids.

While it is remarkable that the strong Latino support has changed the dynamic on immigration reform, let us not forget that comprehensive immigration

reform should also encompass all others who have been mired under a broken immigration system. President Obama did make reference to “the business community continues to be concerned about getting enough high-skilled workers,” but he said it more as an afterthought. We completely and wholeheartedly support a pathway to legalization and citizenship for the millions of undocumented immigrants who have otherwise led productive lives in the US and benefit the country in more ways than one. Immigration reform should not be viewed as only a Latino issue, it is an American issue. The view that reform is a Latino issue is not surprising due to two reasons. First, most Americans continue to think that immigration benefits the immigrants not themselves. Second, because of that, business immigration is not deemed to have the ethical legitimacy the same way that family migration has. For that to change, for sweeping CIR to become reality, all of us must realize that immigration is not a problem to be controlled but an asset to be maximized.

Immigration reform will surely benefit immigrants, but in turn, will also benefit America. It will create a stimulus for the economy and make employers more competitive. We therefore hope that immigration reform will ameliorate the plight of beneficiaries of approved I-140 petitions who are stuck in the endless employment-based third (EB-3) backlogs. These are people whose employers have obtained labor certifications years ago, and who are in the pipe line for a green card, but for the oversubscription in the preference category. Indeed, the [wait for an India EB-3 whose labor certification is filed today is anticipated to be 70 years](#). This is dysfunction at its worst. The wish list for reform is endless and that is because the system is so broken. We clearly need to expand family-based visa numbers too, and it is clearly inhuman to tolerate spouses of permanent residents to be waiting for 3 years before they can get green cards. We should bring back more due process as well as give more discretion to the USCIS or the Immigration Judge to decide whether an immigrant convicted of a crime should stay or be deported. The 3 and 10 year bars have had the perverse effect of creating a larger undocumented population in the US. Because of these bars, many are caught in a federal Catch-22. They are unable to apply for green cards in the US, but if they return to their home country to process for a visa at a US consulate they will be barred for 10 years. Ironically, sluggish economic growth has done what ever-stricter border enforcement could not. Illegal immigration has consistently receded in recent years, spiking in 2000 under President Clinton but down by a third by the time that President

Obama took office. Between 2005-2010, the Pew Hispanic Center estimates that as many Mexicans departed these shores as arrived. Today, [net migration from Mexico is non-existent](#).

We focus here in this blog on the need to also reform our employment-based immigration system. Future blogs will focus on other reform proposals. Any CIR proposal needs to contemplate an expansion of the number of green cards under the employment-based preferences so that an employer is able to obtain the services of a foreign national more quickly after the US labor market has been tested through the labor certification process. We also need more temporary work visas. The current 65,000 H-1B cap, along with the additional 20,000 H-1Bs reserved for graduates with advanced degrees from US universities does not meet the demands of US employers. Moreover, we need to provide an incentive for foreign students whom we educate, especially in STEM (Science, Technology, Engineering and Math) fields, to not leave and compete with the US from their home countries. [Studies](#) have shown that the US is losing in the competition for global talent, and any reform proposal needs to stop this bleeding. There should also be better oversight over officers who are bent on denying temporary work visas because they have self-appointed themselves guardians of the economy or because they do not like a certain business model, such as India-based IT consulting, which is what the [Neufeld](#) memo sought to do. Officers must faithfully apply the law as intended by Congress. Finally, we also need to have a visa that will encourage entrepreneurs and startups in the US.

In addition to broadly reforming the employment-based immigration system, here are some additional pointers that can greatly improve the system we have presently. Even if there is reform of the employment-based immigration system, backlogs could still build up again the coming years. When the numbers in the employment and family-based system were last increased under the Immigration Act of 1990, who would have envisaged that the EB-3 for India would be a 70 year wait! As part of CIR, INA §203(d) should be modified to specify that family members should not be counted separate and apart from the principal alien to stop double or additional counting. Such double counting undermines the principle of family unity which is at the core of our immigration values. Also, when the Child Status Protection Act (CSPA) was enacted, the kind of visa retrogression we have today did not exist. Congress never anticipated systemic visa backlogs particularly affecting EB3 and EB2 for India and China.

That is why they wrote the age formula the way they did. Not until the priority date is current can the pendency of the I-140 be subtracted from the chronological age to give you the CSPA age. In any CIR proposal this should be changed so that you only look to the age of the child when the I-140 is approved. That would make the CSPA relevant to backlogged categories, which is not now the case. We also propose that INA § 245(a)(3) be modified to allow the filing of an adjustment of status application without regard to the priority date. This could be possible for both FB and EB beneficiaries who have an approved an I-130 or I-140 petition. Such adjustment of status applications will be provisionally submitted with final approval subject, as under current law, to the immediate availability of an immigrant visa number.

With regard to H-1B visas, the truth is that a cap on H-1Bs is a cap on the US economy and should be removed. Since many Indian and Chinese students start work in the United States as temporary H-1B workers, we propose the creation of a streamlined or Blanket H-1B application process for large H-1B employers similar to the Blanket L system under which work visa applications can be presented directly to US Consulates abroad, thus bypassing the need for individual H applications with the USCIS. Allow large H-1B employers to enter into centralized application arrangements with US Consulates in connection with the Blanket H-1B similar to what the USCIS now offers many corporate employers so that economies of speed, efficiency, and informed adjudication can be achieved on a consistent basis. It would also be a good idea to remove the six-year maximum imposed by the Immigration Act of 1990 and transform the H-1B visa into what it really is, namely a “pre-immigrant” instead of a “non-immigrant” visa that it is not now and never has been. Also, end the ban on spousal employment for H-4s that cruelly and unnecessarily puts the promising careers of countless professional spouses into the deep freeze. There should be a broader more accessible visa, unlike the very limited H-2B visa we have today, for essential factory, hotel, restaurant, construction and farm workers. That will be the only way to ensure that the undocumented population does not build up again.

If the labor certification procedure will still exist in a CIR proposal, the notion of minimal qualifications that is required when an employer files a labor certification is wholly artificial and does not exist in the real world. Although the points system was suggested in earlier CIR proposals in 2006 and 2007, a points-based system may not effectively match the skills of potential

immigrants with prospective employers. Those who wish to be productively self-employed as entrepreneurs can avail of a specific startup visa. CIR is a good opportunity to broaden the application of the equally qualified standard from academic to all PERM labor certification cases. We also suggest removing the need for print advertisements in all PERM cases since many employers, especially in IT, advertise only on the Internet; allowing use of experience with the same employer, and eliminating the need for a fixed job description that can never change no matter how long a wait till the green card. Keeping a PERM application so static will be totally unrealistic for EB backlogs if they again begin to accumulate.

The shocks waves of November 6th are only a harbinger of things to come. A new study by the Pew Hispanic center predicts that, within 20 years, 40 million Hispanics will be eligible to vote as compared to 23,7 million today. Hispanics are younger and have a higher birth rate than other groups. If the rate of Hispanic political participation reaches the level of Whites and African-Americans, we could [experience a doubling of Hispanic voters by 2032](#). Hispanic voters will constitute fully [40% of the growth in the American electorate between now and 2030](#). If the rate of Hispanic naturalization rises, this would be even more powerful since 5.4 million permanent residents of Hispanic heritage did not vote. Nativists should also take note of the fact that about 800,000 Latinos turn 18 each year. Furthermore, it was not just the strong Latino turn out in favor of Obama. Even [Asian Americans](#), who make up 3% of the electorate, overwhelmingly supported Obama.

The graying of America may be the most serious domestic problem of the next quarter-century. As the massive baby boomer generation slouches towards retirement, an aging population needs the fountain of youth. Immigration may be the magic elixir. The US Census Bureau estimates that the number of elderly people over age 65 could rise from 34.6 million today to 82 million by the year 2050. This trend will be most evident between 2011 and 2030 when those baby boomers born from the late 1940's to the early 1960's hit retirement age. Census experts predict that the number of senior citizens over this period will soar from 13% to 20% of the population. During the same time, the number of foreign-born people living in the United States should dramatically increase, both in absolute terms and as a percentage of the general population. Their number should grow from 26 million today to 53.8 million by the year 2050, an increase from 10 to 13% of the population. If these census statistics are correct,

continued high levels of immigration will be necessary to provide a large enough workforce to support a rapidly aging America. The Census Bureau predicts the immigrants will become a majority in Texas within the next 14 years; five states will have a majority of non-White residents by 2025 and, in the course of the next half-century, Latinos may comprise about 25% of the entire US population. That's a lot of folks and they will no longer be concentrated in a select number of states, such as California, New York, Texas, or Florida, but will be distributed throughout the nation. They will be the deciding votes in elections on all levels and their voice will be a strong and powerful one in setting the political agenda. In 1998, the [National Immigration Forum joined with the Cato Institute to publish a study by Stephen Moore on the fiscal impact of immigration](#). What he found was startling and directly relevant to the problem so much on the mind of Chairman Greenspan. Most immigrants arrive in the United States in the floodtide of their working years; more than 70% of them are over age 18 when they get here. Stephen Moore estimated that there were roughly 17.5 million immigrants now in America whose education was paid for by their home countries, not US taxpayers. He concluded that this represented an infusion of unearned human capital worth some \$43 trillion into the US economy. At a time when fewer and fewer wage earners will have to be paying for growing retirement benefits enjoyed by more and more elderly, it is worth remembering that immigration is one of the main forces keeping the Social Security Trust Fund afloat. In 2007, for example, the [Social Security Trust Fund realized a net benefit of \\$120-240 billion from undocumented workers](#) in the shadow economy representing 5.4%-10.7% of the Fund's total assets of \$2.24 trillion. Immigration is an essential strategy that responsible policy makers must use in a robust way to solve the systemic problem of financing Social Security

For all these reasons, there is no alternative to sweeping comprehensive immigration reform. We are all in this together. The American poet James Russell Lowell famously wrote that "once to every man and nation comes the moment to decide." This is our moment. The time to act is now.