

What kind of reform? Immigration policies on the table: Immigration policies on the table

by [Amy Frykholm](#) in the [June 15, 2010](#) issue

The border between the United States and Mexico has never been firmly fixed. Many families have members living on both sides and shoppers cross back and forth. Every day thousands of people pass over it, some with documents and some without. In the past two decades, millions of immigrants have come to the U.S. without obtaining legal status. They are spurred on by the collapse in Mexican agriculture, shifts in labor and trade caused by the North American Free Trade Agreement, and the desire of separated families to be reunited.

While politicians and legislators have known for the better part of 20 years that U.S. immigration policy is inadequate, calls for comprehensive reform have largely gone unheeded. Nearly everyone agrees that the system is broken, but different critics focus on different elements of the problem.

Proponents of comprehensive reform aim to address border security, workers' rights, the situation of undocumented people already in the U.S., the practice of detaining undocumented workers, and the shape of future immigration policy.

The most comprehensive reform proposal on the table comes from Representative Luis Gutierrez (D., Ill.), a native Chicagoan of Puerto Rican ancestry who has been loudly critical of President Obama's reluctance to address the issue. Gutierrez's bill is heartily endorsed by most immigrants' rights groups, but it is not likely to pass in its current form. Jen Smyers of Church World Service calls it "a marker bill," since it stakes out a clear position. It has no Republican supporters.

Another proposal comes from a group of six Democratic senators (Charles Schumer, Harry Reid, Richard Durbin, Robert Menendez, Diane Feinstein and Patrick Leahy). Schumer (D., N.Y.) has also worked on the plan with Republican Senator Lindsey Graham of South Carolina, and the two senators laid out their bipartisan approach in

a *Washington Post* editorial in March of this year. But Graham, upset with Reid's legislative priorities and under pressure to toe the Republican line in an election year, subsequently withdrew his support for the plan.

The framework put forward by the Democratic senators shares a great deal in common with Gutierrez's bill, though Gutierrez focuses more on transforming the visa and quota systems, while the Democratic senators devote most of their attention to enforcement issues.

One of the most controversial questions in any reform bill is what to do about undocumented immigrants who are already here. Yet despite the controversy, this may be one of the easiest issues to resolve. The Democrats' proposals are very close to ones offered by George W. Bush and John McCain. Nearly every policy maker agrees that these residents need to be given a path to citizenship, that mass deportation is impractical, and that the current practice of raiding workplaces or accosting people because they are suspected of being "illegal" is inhumane and creates more problems than it solves. Proposals vary mostly on how punitive the path to citizenship should be.

Under Gutierrez's proposal, anyone who has been in this country peacefully from the date of the bill's introduction (December 15, 2009) can apply for legal residency after paying a fee of \$500, undergoing a background check and paying any tax obligations. Gutierrez is particularly sensitive to the needs of young people, and his bill allows young people who have been in the U.S. since before their 16th birthday, who have no criminal record and who have graduated from high school to apply for permanent residency without paying a fee.

The senators' bill would allow undocumented residents to apply for registration as a lawful prospective immigrant. That status would, after screening, allow them to work legally in the U.S. and travel freely outside the county. After eight years they would be allowed to apply for permanent resident status.

The key, says Smyers, is finding a middle path that is "rigorous but fair." Many policy advocates argue that a nonpunitive path is the only workable one. If the punishment for illegal immigration is higher than people can or will pay, then reform will not succeed.

"The more workable a pathway to earn legal status is the more successful it will be," Smyers said. She believes that both Gutierrez's and the senators' proposals meet

that criterion.

Far more difficult is the question of how to enforce the border. The senators' proposal argues that securing the border is of the highest priority. It recommends increasing the number of Border Patrol officers and the number of U.S. Immigration and Customs Enforcement agents who combat smuggling. The senators' bill also calls for more resources for inspections and fraud detection, and for improving technology at the border and providing more resources for the prosecution of crimes related to immigration. "These benchmarks must be met *before* action can be taken to adjust the status of people already in the United States illegally," the senators argue.

Over the past ten years, the border between the United States and Mexico has become more militarized than ever. Homeland Security Secretary Jan Napolitano says that the more we do to increase security at the border, the more the demand increases. "Every marker, every milepost that has been laid down by Congress in terms of number of agents, deployment of technology, construction of fencing and the like has either been completed or is within a hair's breadth of being completed," she said. And yet it is never enough. "One of the questions . . . we need to talk about is whether . . . the goalpost is just going to keep moving."

Napolitano and others believe that if militarization of the border were the answer, the problem would be solved. Bill Mefford, who works on human rights issues for the United Methodist Church, argues that "when you approach [reform] from [a human rights] perspective, you immediately move to commonsense solutions that work for all parties involved. But when people approach this subject from a fear-based, seal-the-border perspective, you end up talking about things that don't work and that have enormous costs, both human and economic."

Many argue that the first step to border security is a sane immigration policy. The current wait for an immigrant spouse or minor child to be united with a U.S. citizen through legal channels is seven years. If the wait were shorter and if the number of visas issued equaled the demand for hiring immigrants, people would be less likely to cross the border illegally. Without a policy that meets these basic needs, many advocates argue, more militarization of the border accomplishes nothing. But no legislative action is going to be viable if it isn't seen as being "tough on border security"—and the senators' proposal aims to be tough.

Senator Schumer proposes a national “biometric employee identification” system that would allow employers to verify employees’ status. In his *Washington Post* editorial with Senator Graham, Schumer wrote: “We would require all U.S. citizens and legal immigrants who want jobs to obtain a high-tech, fraud-proof Social Security card. Each card’s unique biometric identifier would be stored only on the card. . . . The card would be a high-tech version of the Social Security card that citizens already have.”

Every employee in the U.S. would need to enroll, present documentation and then have some kind of “biometric” information, like a fingerprint, installed on an identification card. Schumer believes that if employers had this kind of identification system, they would hire only verified workers.

Advocates for this system say that it would provide a way for employers to know they are hiring authorized workers and thus allow the government to increase the penalty for hiring unauthorized workers.

There is little difference between the national ID card and a driver’s license technologically; however, out of concerns for privacy, the U.S. has a tradition of shying away from “nationalization” of identification.

Critics raise concerns about both privacy and efficacy. They point out that we already have a smaller-scale system called e-verify, and it has such a high error rate that employers are constantly frustrated and employees can spend months or even years trying to prove their legal status once a mistake is made in the system. No one likes the prospect of a computer error causing loss of livelihood.

The American Civil Liberties Union and other privacy advocates are raising concerns about the safety and constitutionality of the federal government collecting and storing that kind of information. The ACLU has complained that “a national ID would not only violate privacy by helping to consolidate data and facilitate tracking of individuals, it would bring government into the very center of our lives by serving as a government permission slip needed by everyone in order to work.”

Because visa limits have not changed since the 1980s, a tremendous backlog of unprocessed visa applications is choking the system. Both Gutierrez’s bill and the framework provided by the senators would address this problem. The senators designate an eight-year period for working through the backlog, and they makes changes in the family preference category of visa allocation. Right now, only the

children and spouses of U.S. citizens are included in the “immediate relatives” category and receive high preference. In the new proposals, the spouses and children of lawful permanent residents would also receive this designation.

This step is important for immigrants’ rights activists because of its emphasis on family unity. The Interfaith Immigration Coalition lists family unity as one of its top priorities of immigration reform. Family unity, advocates argue, is good for everyone. First, there is the economic benefit. People who live in the U.S. with their families earn and spend money in the U.S.; people whose families are in the countries of origin send their money home. A second benefit is the integration of immigrants into the communities where they live. Smyers said, “Statistically and anecdotally, we know that children are the best indicator of integration success. Parents are more involved in their communities when the children are present. That’s good for all Americans.”

The senators’ framework includes changes to the temporary and permanent worker provisions. The proposal calls for a flexible framework that can be pegged to market demands and that includes both temporary and permanent visas. Both Gutierrez and the senators emphasize attracting foreign students and developing a highly skilled labor force. The senators call for a commission to determine market needs and peg those needs to immigrant quotas. The commission would try to answer the question, what kind of workers do we need and when do we need them?

Both proposals make changes in policy regarding H-2 visas (for temporary and seasonal workers), and both strive to find a balance between the demands of business and the needs of workers. The agriculture industry has been hit particularly hard by the inability of the federal government to come up with a coherent and fair migrant and seasonal worker program. Owners of large farms that require seasonal workers complain that they are unable to fill their quotas without temporary worker programs, which have been reduced or cut out of fear of misuse and because of the recession. Both Gutierrez and the senators point to the example of already drafted legislation, like the AgJOBS bill, which had significant bipartisan support even though it failed to pass.

For those who work closely with immigrants, one of the most troubling aspects of current immigration policy is the lack of standards and procedures for detention and deportation. Under the Obama administration, detention rates have increased dramatically, and more people are being channeled from the criminal justice system

to the less well defined and more shadowy processes of the immigration enforcement system. Current detention policy also entangles local and state law enforcement in ways that make it difficult for everyone to know what is happening and why.

For many human rights and advocacy groups, this is the key issue of immigration reform. Advocates insist that a set of national standards for detention and deportation must be a priority. Currently there are no set standards for the treatment of detainees, and there are grave concerns about human rights abuses in a system that lacks transparency. Reform, as far as human rights groups are concerned, means access to legal counsel, an end to what are called “stipulated removals” (where immigrants are deported without any kind of hearing), access to translation services and some kind of independent judicial review before removal.

Both Schumer’s and Gutierrez’s proposals include standardization and codification of detention procedures that are enforceable by law. The senators’ framework makes provisions for hearings and for the children of detainees. Gutierrez’s provides for translation of court proceedings and for hearings prior to removal.

It will be difficult to pass comprehensive immigration reform during a tense election year, but the past few months have made it clear that such reform is urgent. The debate over immigration reform requires us to think not only about numbers and quotas and the efficacy of identification systems, but about what kind of society we want to be, what kind of neighbors and what kind of Christians.