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Possible Reforms of the U.S. Immigration Laws

Kevin R. Johnson*

INTRODUCTION

In 1952, Congress passed the comprehensive federal immigration statute, the Immigration and Nationality Act (INA).¹ The law has been amended almost annually since its original enactment, sometimes in minor ways and other times with major overhauls.

The last decade has seen a series of calls for immigration reform in the United States. Many reform bills have been debated in Congress and among the public at large.² To this point, efforts to pass significant—referred to by many observers as “comprehensive”—immigration reform have failed.³

The politics of immigration are complex, with public debate of the issue often heated. Positions on immigration are not neatly divided along Republican and Democratic party lines. For example, labor unions, generally considered to be liberal politically, at times have supported immigration restrictions in hopes of protecting domestic workers, while The Wall Street Journal, known for its conservatism, has championed easy admission of labor.

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² See infra Part II.

³ For different perspectives on comprehensive immigration reform, see Steven W. Bender, Compassionate Immigration Reform, 38 FORDHAM URB. L.J. 107 (2010); Sheila Jackson Lee, Why Immigration Reform Requires a Comprehensive Approach That Includes Both Legalization Programs and Provisions to Secure the Border, 43 HARV. J. ON LEGIS. 267 (2006); Christopher J. Walker, Border Vigilantism and Comprehensive Immigration Reform, 10 HARV. LATINO L. REV. 135 (2007); see also John D. Skrentny & Micah Gell-Redman, Comprehensive Immigration Reform and the Dynamics of Statutory Entrenchment, 120 YALE L.J. ONLINE 325 (2011) (explaining the failure of Congress to enact comprehensive immigration reform during the Bush and Obama administrations).
One complicating factor for immigration reform is that the events of September 11, 2001 have influenced the immigration debate. Even after more than a decade, any reform proposal that does not focus on border enforcement and enhanced removal efforts continues to risk claims that it poses undue risks to the national security and public safety.4

Part I of this Article first outlines the impacts of the contemporary operation of the U.S. immigration laws and some of the problems with the current immigration system. Part II describes various reform proposals floated in Congress in the last few years. Part III generally outlines some more far-reaching possibilities for immigration reform.

I. THE IMMIGRATION STATUS QUO

To appropriately evaluate potential immigration reforms, one must consider the operation of modern U.S. immigration law and policy and its impacts.

A. Undocumented Immigration

As President George W. Bush observed in calling for immigration reform in 2006, “illegal immigrants live in the shadows of our society. . . . The vast majority . . . are decent people who work hard, support their families, practice their faith, and lead responsible lives. They are part of American life, but they are beyond the reach and protection of American law.”5

Somewhere in the neighborhood of 12 million undocumented immigrants currently live in the United States.6 Rather than

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6 JEFFREY S. PASSEL, D’VERA COHN & ANA GONZALEZ-BARRERA, PEW RESEARCH CTR., POPULATION DECLINE OF UNAUTHORIZED IMMIGRANTS STALLS, MAY HAVE REVERSED 6 (2013), available at http://www.pewhispanic.org/files/2013/09/Unauthorized-Sept-2013-FINAL.pdf, estimates that, as of March 2012, 11.7 million unauthorized immigrants lived in the United States. The U.S. government, whose estimates historically have been somewhat lower than those of non-governmental groups, estimated that, in 2011, 11.5 million undocumented immigrants lived in the United States compared to
engaging in futile efforts to close the border, the United States would benefit if its immigration laws better addressed the modern political, economic, and social realities currently fueling undocumented immigration and attracting the millions of people who live and work in communities across the country in contravention of the U.S. immigration laws.

Generations of migrants from Mexico have made their way to the United States. In modern times, migrants literally risk life and limb to come to this land of freedom and opportunity. Absent dramatic economic, political, and social changes, immigrants will continue to come lawfully and unlawfully to the United States in pursuit of employment and to reunite with family members.

The limited legal avenues under U.S. law for labor migration encourage migration in violation of the law by noncitizens who seek to work in the country. Many unskilled and medium-skilled workers have no line to wait in to lawfully immigrate to the United States.

Laws and policies promoting more liberal admissions would decrease the incentives for undocumented immigration. However, such policy proposals are often characterized as sacrificing national security by allowing too many immigrants into the United States. In response, commentators claim that flexible immigration admission systems would in fact better ensure national security. A scheme that better matches the demand for immigration—while minimizing the incentive for undocumented immigration and thus limiting the creation and maintenance of a population of millions of undocumented immigrants—arguably would better ensure public safety.

To begin with, an immigration system that maximizes the likelihood that the U.S. government has the basic identifying information, such as name


and address, of as many immigrants in the United States as possible would improve criminal and immigration law enforcement and allow the nation to better protect national security.

Recent years have seen increasingly aggressive efforts in the United States to close the southern border with Mexico. However, increased border enforcement efforts, to the surprise of many, have been accompanied by an increase in the overall size of the undocumented population. One study concluded that “[t]here is no evidence that the border enforcement build-up... has substantially reduced unauthorized border crossings,” and that “[d]espite large increases in spending and Border Patrol resources... the number of unauthorized immigrants... increased to levels higher than those” before 1986. The bottom line is that the undocumented population in the United States has doubled since the mid-1990s.

The fact that so many undocumented immigrants live in the United States confirms what most Americans know—that the immigration laws are routinely violated and, as currently configured, are effectively unenforceable. The magnet of jobs unquestionably attracts many undocumented immigrants to the United States. Undocumented workers understand that if they are able to make the often-arduous journey to the United States, they can obtain work and that the job will pay more than most of them would have been able to earn in their native countries. Employers willingly hire undocumented workers. Day laborer pickup points in many American cities demonstrate both that undocumented immigrants can obtain work and employers are willing to hire them.

Employer sanctions, which bar the employment of undocumented immigrants, added to the immigration laws in 1986 have failed to put an end to the employment of undocumented immigrants. Computer systems designed to

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10 Belinda I. Reyes et al., Holding the Line? The Effect of the Recent Border Build-up on Unauthorized Immigration, at viii, xii (2002) (emphasis added).
11 See Passel, Cohn & Gonzalez-Barrera, supra note 6, at 6.
13 For critical analysis of the failure of employer sanctions to deter the employment of undocumented immigrants, see Cecelia M. Espenoza, The Illusory Provisions of
allow employers to easily verify work authorization, such as E-Verify, continue to have high error rates.\textsuperscript{14}

To this point, the addition of incremental enforcement measures has had a limited impact on undocumented immigration from Mexico.\textsuperscript{15} The U.S. government simply has been unable to keep migrants—who are so determined that they are willing to risk their lives—from unlawfully entering, and remaining in, the country.\textsuperscript{16} It makes little sense from an immigration or security standpoint to simply continue to throw resources at fortifying the borders, increasing border enforcement, and engaging in the futile attempt to keep all undocumented immigrants out of the country.

The U.S. government has engaged in limited efforts to remove noncitizens who lawfully entered the country on temporary visas, such as students and tourists, but overstayed their terms. Visa overstays likely constitute somewhere between twenty-five and forty percent of the undocumented population.\textsuperscript{17} Increased monitoring of nonimmigrant visa holders after September 11 does not appear to have had much of an impact on reducing visa overstays. Raids and increased interior enforcement pursued by the Bush administration also have not reduced the undocumented population in the United States.\textsuperscript{18}


\textsuperscript{14} See Westat, Findings of the E-Verify Program Evaluation 114 (2009), available at http://www.uscis.gov/sites/default/files/USCIS/E-Verify/E-Verify/Final%20E-Verify%20Report%202012-16-09_2.pdf; Emily Patten, Note, E-Verify During a Period of Economic Recovery and High Unemployment, 2012 Utah L. Rev. 475, 482–83; see also T. Alexander Aleinikoff, Administrative Law: Immigration, Amnesty, and the Rule of Law, 2007 National Lawyers Convention of the Federalist Society, 36 Hofstra L. Rev. 1313, 1314 (2008) (acknowledging that the United States is years away from creating a computerized system that can reliably identify undocumented workers: “There is no clear way to fix employer sanctions anytime soon. The widely discussed ‘smart cards’ or ‘swipe cards’ will be years in the making. Meanwhile, massive work will need to be done on government databases to clean up misspelled, duplicate, and false names.”) (footnote omitted).


\textsuperscript{16} See generally Peter Andreas, Border Games: Policing the U.S.-Mexico Divide (Peter J. Katzenstein ed., 2000) (analyzing the difficulties of border enforcement in reducing undocumented immigration while offering concrete benefits to politicians in pursuing border enforcement strategies).


Resistance to interior enforcement from employers, as well as immigrant rights advocates, makes such enforcement politically challenging. However, increased border enforcement without any effort to tighten the availability of jobs to undocumented immigrants will ultimately do little to change the status quo. The availability of jobs unquestionably will continue to fuel migration to this country.

The current American immigration laws in many respects resemble the failed Prohibition-era anti-alcohol laws. In both instances, enforcement of the law failed dramatically and, to make matters worse, resulted in widespread negative collateral consequences, including widespread violation of the law, increased criminal activity, and diminished public perception of the legitimacy of the law.

B. Labor Exploitation

The operation of the immigration laws has negative labor market consequences. Indeed, the large undocumented population harkens back to the days following the abolition of slavery in the United States, with a racial caste of workers relegated to a secondary labor market. As Professor Leticia Saucedo has written, the nation has seen the emergence of a “brown collar” workplace, with many Mexican migrants working in low-wage jobs. The new “Jim Crow” sees undocumented immigrants working for low wages in poor conditions—and virtually unprotected by law—in one labor market and all others in a superior, more law-abiding labor market.


Other adverse consequences also are associated with the current immigration laws and their enforcement. Reports of involuntary servitude of immigrants in the modern United States have increased in recent years. More commonly, exploited in the workplace, undocumented workers have legal rights that go unenforced. Because many are people of color, the nation’s labor market has a distinctively racial caste quality to it. This labor market operates outside of the confines of law, with undocumented workers enjoying few legal protections and often working for low wages in poor conditions. More realistic immigration law and policy that allows labor migration could help eliminate this secondary labor market and halt the exploitation of undocumented workers (by making them less vulnerable because of their unauthorized immigration status).

C. Human Trafficking and Death on the Border

Demand for evasion of the law by millions of undocumented immigrants has contributed to the emergence of highly organized human trafficking networks. In no small part due to tighter


immigration enforcement, the trafficking of human beings today is a booming industry, with the problem extending across the entire United States. Deaths regularly occur as migrants attempt the dangerous crossing of the U.S./Mexico border.27

Besides risking life and limb, some immigrants are forced to work to pay off smuggling debts, with thousands of immigrant women forced into the sex industry and other exploitative work arrangements.28 The trafficking of human beings—with its devastating impacts—flows directly from heightened immigration enforcement. Recognizing the problem, Congress has passed laws in response to human trafficking but has failed to more fundamentally reform the laws that in effect encourage the unlawful labor practice.29

D. A Disrespected Immigration Bureaucracy

The American immigration bureaucracy frequently is accused of being unfair and biased. Many commentators and jurists currently express a lack of respect and confidence in the agencies that enforce the immigration laws.

The Immigration and Naturalization Service (INS), which until the spring of 2003 possessed primary responsibility for enforcing the immigration laws, had long been criticized as

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excessively focused on enforcement and being inefficient, arbitrary, and incompetent. The new Department of Homeland Security (DHS) appears as enforcement-oriented as the old INS. This is not altogether surprising because the agency, as its name connotes, was created with the primary purpose of better protecting “homeland security,” not serving the needs of immigrants. Nor has the dismantling of the INS seen any dramatic improvement in the efficiency of immigration operations. Unless the DHS is reformed so that it better balances its enforcement and service functions, pouring increasing resources into the agency is unlikely to improve matters. For example, additional increases to funding to increase the number of Border Patrol officers without significantly providing sufficient training for them is likely to make matters worse, not better.

In addition, the decisions of the immigration courts and Board of Immigration Appeals (BIA) have been the subject of sustained criticism. The Board has long been challenged for, among other things, a lack of independence and neutrality. Other criticisms run the gamut from poor quality rulings (most charitably attributed to a high volume of matters to review), to

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bias against noncitizens, to simple incompetence. Such criticism increased after the BIA changed its procedures in 2002 to expedite its rulings in an attempt to reduce a large backlog of appeals.\textsuperscript{34}

Respected court of appeals judge Richard Posner, a conservative appointed to the federal bench by Republican President Ronald Reagan, is a vocal critic of the decisions of the BIA.\textsuperscript{35} As Judge Posner succinctly stated in one immigration appeal, “[a]t the risk of sounding like a broken record, we reiterate our oft-expressed concern with the adjudication of asylum claims by the Immigration Court and the Board of Immigration Appeals and with the defense of the BIA’s asylum decisions in this court.”\textsuperscript{36} In another opinion, he stated, “We understand the Board’s staggering workload. But the Department of Justice cannot be permitted to defeat judicial review by refusing to staff the Immigration Court and the Board of Immigration Appeals with enough judicial officers to provide reasoned decisions.”\textsuperscript{37} Judge Posner in still another opinion emphasized that

\begin{quote}
[d]eference is earned; it is not a birthright. Repeated egregious failures of the Immigration Court and the Board to exercise care commensurate with the stakes in an asylum case can be understood, but not excused, as consequences of a crushing workload that the executive and legislative branches of the federal government have refused to alleviate.\textsuperscript{38}
\end{quote}

The immigration courts also have been the subject of public criticism. In late 2005, \textit{The New York Times} ran a front page story about how immigration judges, at times in mean-spirited and disrespectful ways, callously treated noncitizens and disposed of their cases.\textsuperscript{39} In response, then-Attorney General

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\textsuperscript{34} See Stacy Caplow, After the Flood: The Legacy of the “Surge” of Federal Immigration Appeals, 7 NW. J.L. & SOC. POL’Y 1 (2012) (discussing the surge of appeals in the federal courts following the BIA’s streamlining measures); Jill E. Family, Beyond Decisional Independence: Uncovering Contributors to the Immigration Adjudication Crisis, 59 U. KAN. L. REV. 541 (2011) (analyzing contemporary immigration adjudication problems, including the dilution of judicial review resulting from streamlining measures); Scott Rempell, The Board of Immigration Appeals’ Standard of Review: An Argument for Regulatory Reform, 63 ADMIN. L. REV. 283 (2011) (studying the impacts of the reforms on the Board’s standard of review).
\textsuperscript{36} Pasha v. Gonzales, 433 F.3d 530, 531 (7th Cir. 2005).
\textsuperscript{37} Mekhael v. Mukasey, 509 F.3d 326, 328 (7th Cir. 2007).
\textsuperscript{38} Kadia v. Gonzales, 501 F.3d 817, 821 (7th Cir. 2007).
\end{flushright}
Alberto Gonzales formally instructed the immigration judges to improve their conduct. The Bush administration also was found to have employed political litmus tests in the selection of immigration court judges.

Along these lines, an empirical study of asylum decision-making published in 2009 has shown widely disparate results in the asylum decisions of immigration judges. The evidence suggests a chronic problem in the quality and consistency of the immigration court and BIA decisions, thereby placing their legitimacy in serious question.

Concerns with immigration adjudication persist. In 2013, the president of the National Association of Immigration Judges offered one possible solution:

Immigration courts must be restructured as real courts under Article I of the Constitution, similar to Tax and Bankruptcy Courts, so we can maintain administrative independence and ensure total transparency in our proceedings. This would free them from any control or influence by the Attorney General or Department of Homeland Security. While seemingly technical, this change is essential to achieve the most fundamental expectation we American’s [sic] hold about judges: that they are independent and protected from undue influence by any party to their proceedings. It is a reform which is much needed and long overdue.

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40 For discussion of the Attorney General’s memorandum, see Cham v. Attorney Gen., 445 F.3d 683, 686–89 (3d Cir. 2006).
E. The Need for More Reasonable Immigration Laws

A system that authorizes easier migration of labor to the United States would likely decrease the incentive for circumventing the immigration laws. More liberal admissions grounds that allow workers and migrants who lack family members in the United States to lawfully enter into this nation would be a good first step.

To this end, narrower inadmissibility grounds in the U.S. immigration laws would be more realistic than the current blanket exclusions that, for example, bar the immigration of poor and working people from the developing world. With relaxation of the inadmissibility grounds, the nation could devote scarce enforcement resources to efforts to bar the entry into the United States of criminals, terrorists, and other serious dangers to society. As seen in other areas of law enforcement, more focused immigration law enforcement has a greater likelihood of rooting out public safety risks than scattershot efforts that infringe on the civil rights of large numbers of people.

Moreover, more carefully crafted immigration enforcement is less likely to frighten immigrant communities—the very communities whose assistance is essential if the United States truly seeks to successfully combat global terrorism and crime generally. Unfortunately, the “war on terror” following September 11, 2001 has almost undoubtedly chilled Arabs and Muslims living in the United States from cooperating with the government in counter-terrorism efforts.

A system in which undocumented migration is reduced would allow for improved tracking of all noncitizens entering and living in the United States. It is difficult to see how the existence of millions of undocumented immigrants living off the grid could


in any way be in the national interest. Nor is there sufficient evidence that the U.S. government as a practical matter could end undocumented immigration under the current laws and remove all undocumented immigrants from the country.

Consider the available evidence. Despite record levels of removals in the years since September 11, 2001, officials at the highest levels of the U.S. government recognize that removal of all undocumented immigrants from the country is simply not possible. In 2006, President George W. Bush himself acknowledged that “[m]assive deportation of the people here is unrealistic. It’s just not going to work.” President Obama has made similar statements. A 2005 study estimated that it would cost $41 billion a year for five years to fund a serious effort to remove all undocumented immigrants from the country.

At the same time, more liberal admissions of immigrants to the United States arguably would benefit the national economy. The Economic Reports of the President in both the Bush (Republican) and Obama (Democratic) administrations have extolled the benefits of immigrants to the U.S. economy. The Obama administration has argued that immigration reform would bring substantial economic benefits.

Some contend that incremental reform will not work and that bolder initiatives are necessary to cure the ills of modern U.S. immigration law. In that vein, the possibility of much more

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49 See Obama Addresses the National Council of La Raza, WASH. POST (July 15, 2008, 10:49 AM), http://www.washingtonpost.com/wp-dyn/content/article/2008/07/15/AR2008071501138_pf.html (advocating a path to legalization for undocumented immigrants: “we cannot and should not deport 12 million people”).


open borders has been advocated. In an era of an increasingly integrated world economy, the United States arguably requires a system of immigration admissions that better comports with social, political, and economic factors contributing to immigration than the current system. At a most fundamental level, the nation needs immigration laws that avoid the creation and re-creation of an undocumented immigrant population numbering in the millions.

II. CONGRESSIONAL PROPOSALS FOR IMMIGRATION REFORM

For roughly a decade, the nation has engaged in a fractious national debate over reform of the immigration laws, with a special focus on undocumented immigration from Mexico. The proposals frequently call for legalization of undocumented immigrants, “guest” (or temporary) worker programs, and a myriad of enforcement measures. The granting of “amnesty” to undocumented immigrants in some of the proposals became a charged political accusation and contributed to political opposition to any reform proposal including a path to legalization for undocumented immigrants.

In December 2005, the House of Representatives passed what was known as the Sensenbrenner bill, named after its sponsor, Representative James Sensenbrenner. The tough nature of the bill sparked protests of thousands of immigrants and their

54 See Walter A. Ewing, From Denial to Acceptance: Effectively Regulating Immigration to the United States, 16 STAN. L. & POL’Y REV. 445, 445 (2005) (“U.S. immigration policy is based on denial. Most lawmakers in the United States have largely embraced the process of economic ‘globalization,’ yet stubbornly refuse to acknowledge that increased migration, especially from developing nations to developed nations, is an integral and inevitable part of this process.”).
57 Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005, H.R. 4437, 109th Cong. (2005). The Sensenbrenner bill, among other things, would have made the mere status of being an undocumented immigrant a felony subject to imprisonment and would have imposed criminal sanctions on persons who provided humanitarian assistance to undocumented immigrants. See id. §§ 203, 205.
supporters across the United States.\textsuperscript{58} Shortly thereafter, the Senate passed a more moderate reform proposal, which included legalization and guest worker programs in addition to more moderate enforcement measures than in the Sensenbrenner bill.\textsuperscript{59} Ultimately, the controversy ended in 2006 with Congress failing to enact immigration reform. It instead agreed only to authorize extension of a fence along the United States’ southern border with Mexico.\textsuperscript{60} Congress did so even though there is no evidence that this, or any other border enforcement measure alone, will decrease the flow of undocumented immigrants to the United States.\textsuperscript{61}

In the 2008 election campaign, President Obama expressed support for immigration reform, with a majority of Latina/o voters supporting him.\textsuperscript{62} His administration renewed calls for comprehensive immigration reform.\textsuperscript{63} In 2013, the Senate passed the Border Security, Economic Opportunity, and Immigration Modernization Act (S. 744),\textsuperscript{64} which was co-sponsored by a bipartisan group of Senators. The bill generally has four basic objectives:

(1) creating a path to citizenship for the approximately 11 million undocumented aliens currently living in the United States; (2)

\textsuperscript{58} For analysis of the spring 2006 immigrant rights marches, see Kevin R. Johnson & Bill Ong Hing, \textit{The Immigrant Rights Marches of 2006 and the Prospects for a New Civil Rights Movement}, 42 HARV. C.R.-C.L. L. REV. 99 (2007); Sylvia R. Lazos Vargas, \textit{The Immigrant Rights Marches (Las Marchas): Did the “Gigante” (Giant) Wake Up or Does It Still Sleep Tonight?}, 7 NEV. L.J. 780 (2007).


\textsuperscript{61} See Johnson, supra note 53, at 114–15.

\textsuperscript{62} See Mark Hugo Lopez, \textit{Few Hispanic Ctrl., The Hispanic Vote in the 2008 Election}, at i–ii (2008), available at www.pewhispanic.org/files/reports/98.pdf (stating that Latina/o voters supported the Democratic presidential ticket by a 2:1 margin over the Republican candidates for President and Vice President).


reforming America’s immigration system to better recognize characteristics that will help build the economy; (3) implementing an effective employment verification system; and (4) establishing an improved process for admitting future workers.\footnote{Brandon E. Davis, The Border Security, Economic Opportunity, and Immigration Modernization Act: An Overview of the Changes Employers May Expect Following Comprehensive Immigration Reform, Fed. L.A.W., Jan./Feb. 2014, at 24, 26.}


A. The DREAM Act


Versions of the DREAM Act would have defined residency requirements for in-state tuition without regard to immigration
status, provided a path to legalization for eligible undocumented students, and made undocumented students eligible for federal financial aid (which they currently are not). Immigration restrictionists harshly criticize the many iterations of the DREAM Act, contending, among other things, that they reward unlawful conduct and amount to an “amnesty” for undocumented immigrants.\textsuperscript{69} 

In 2007, the DREAM Act was part of a comprehensive Senate immigration bill that Congress ultimately failed to enact.\textsuperscript{70} A subsequent version of the Act, which would have permitted a path to legalization for undocumented high school graduates who attend college or serve in the military, failed in the U.S. Senate.\textsuperscript{71} To date, Congress has not passed any version of the DREAM Act.

Although lacking authority to provide a path to legalization for undocumented immigrant students, some states, including California, have expanded access for undocumented students to public colleges and universities.\textsuperscript{72} In contrast, Arizona voters passed an initiative that barred public universities from providing undocumented students with any “public benefits,” including in-state fees, state financial aid, or enrollment in adult education classes.\textsuperscript{73}


\textsuperscript{70} See Preston, supra note 69.


\textsuperscript{72} See, e.g., Martinez v. Regents of the Univ. of Cal., 241 P.3d 855 (Cal. 2010), cert. denied, 131 S. Ct. 2961 (2011) (rejecting a challenge to a California law that allows certain graduates of California high schools, including undocumented immigrants, to pay the same fees as state residents to attend the University of California, state universities, and community colleges). For analysis of the Martinez decision, see Kyle William Colvin, Note, In-State Tuition and Illegal Immigrants: An Analysis of Martinez v. Regents of the University of California, 2010 BYU EDUC. & L.J. 391; Beverly N. Rich, Note, Tracking AB 540’s Potential Resilience: An Analysis of In-State Tuition for Undocumented Students in Light of Martinez v. Regents of the University of California, 19 S. CAL. REV. L. & SOC. JUST. 297 (2010).

B. Prosecutorial Discretion and Deferred Action for Childhood Arrivals

With Congress failing to pass immigration reform, the Obama administration took a number of steps to fine-tune its immigration enforcement efforts. While focusing its efforts on immigrants with brushes with the criminal law, it administratively employed its discretionary authority to make certain removal cases a low priority.

One important area of deferred action involved a category of noncitizens who would have benefitted from passage of the DREAM Act. In June 2012, the U.S. Department of Homeland Security announced the Deferred Action for Childhood Arrivals program (DACA), an exercise of prosecutorial discretion that provides temporary relief from removal on a case-by-case basis to those who entered the United States as children. To be eligible for relief, a noncitizen must have entered the United States before the age of sixteen; continuously resided in the United States since June 15, 2007; been physically present in the United States and not over the age of thirty when DACA was announced; have not been convicted of a felony, a significant misdemeanor, or multiple misdemeanors; not pose a threat to national security or public safety; and be currently in school, graduated from high school, obtained a General Educational Development (GED) certification, or be an honorably discharged veteran of the U.S. Coast Guard or Armed Forces. DACA recognizes its in-state tuition for DACA recipients would be unlawful under the order. See Daniel González, Young Migrants May Get Arizona College Tuition Break, ARIZ. REPUBLIC (Sept. 12, 2012), http://www.azcentral.com/news/articles/20120912young-migrants-may-get-arizona-college-tuition-break.html (“The executive order did not address tuition specifically, but Brewer said afterward that allowing illegal immigrants to pay in-state tuition even if they receive deferred action and work permits would violate state law.”).


75 DHS Memorandum, supra note 74, at 1.
beneficiaries to be “low priority cases” for removal from the
United States.76

By the end of the first quarter of fiscal year 2014, U.S.
Citizenship and Immigration Services reported that it had
received a total of 638,054 DACA applications, approved 521,815,
and denied 15,968.77 In 2014, DHS announced a renewal program
for DACA recipients.78

DACA recipients are able to obtain employment
authorization, a Social Security number, and, in many states, a
driver’s license.79 However, the relatively high $465 filing fee and
the requirement of documentation of continuous presence in the
United States since 2007 can serve as impediments to successful
applications,80 which may help explain why many eligible
noncitizens have not applied for DACA relief.

Thus far, DACA has helped more than a half million
immigrants “who were brought to this country as children and
know only this country as home.”81 As one commentator has
noted, however, “it is not a permanent solution and does not
grant [recipients] any long-term immigration status stability.”82

III. ALTERNATIVE VISIONS

Future possibilities for immigration reform run the gamut.
Reform could represent incremental changes to the current
immigration laws, with “comprehensive” immigration reform
similar to S. 744 a possibility.83 As one commentator observed,

76 See id.
77 U.S. CITIZENSHIP & IMMIGRATION SERVS., NUMBER OF I-821D, CONSIDERATION OF
DEFERRED ACTION FOR CHILDHOOD ARRIVALS BY FISCAL YEAR, QUARTER, INTAKE,
http://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Imm
igration%20Forms%20Data/All%20Form%20Types/DACA/DACA-06-02-14.pdf.
78 See Secretary Johnson Announces Process for DACA Renewal, U.S. CITIZENSHIP
-announces-process-daca-renewal.
79 See Frequently Asked Questions: The Obama Administration’s Deferred Action for
org/FAQdeferredactionyouth.html.
80 AUDREY SINGER & NICOLE Pritchal SVAJLENKA, METRO. POLICY PROGRAM AT
BROOKINGS, IMMIGRATION FACTS: DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA) 2
(2013), available at http://www.brookings.edu~/media/research/files/reports/2013/08/14%
20daca/daca_singer_svajlenka_final.pdf.
81 DHS Memorandum, supra note 74.
82 Mariela Olivares, Renewing the Dream: DREAM Act Redux and Immigration
83 See, e.g., KEVIN R. JOHNSON, TEN GUIDING PRINCIPLES FOR TRULY COMPREHENSIVE
IMMIGRATION REFORM: A BLUEPRINT, 55 WAYNE L. REV. 1599 (2009); Doris Meissner,
KEYNOTE ADDRESS, 16 TEMP. POL. & CIV. RTS. L. REV. 308 (2007); ASA HUTCHINSON, KEYNOTE
A thoughtful and responsible reform package must accomplish a few things. First, it must address the dilemma of the existing undocumented immigrant population in our country. Second, it must regulate future flows of immigrants consistent with our labor market needs and economic interests in an increasingly inter-dependent world. Third, it must advance the protection of both U.S. and foreign workers. Finally, it must reflect the deeply engrained American value of fairness.84

The author of this Article has argued that economic, moral, and policy arguments militate in favor of more liberal admissions of immigrants to the United States than that provided by current law.85 A related possibility is the greater economic integration, including the integration of labor markets, of the United States, Canada, and Mexico modeled after the relatively successful European Union.

A. A North American Union? Increased Economic Integration of Canada, Mexico, and the United States

At the tail end of the twentieth century, regional common markets gained popularity. Many nations perceived the economic benefits of more integrated economies. At the same time, there was reluctance to move from a restricted to a more open scheme immediately. In several important instances, including the European Union, labor migration between the member nations evolved out of increased trade of goods and services.

The U.S. government at some point may consider regularizing the flow of labor from Mexico into the United States.86 The North American Free Trade Agreement (NAFTA) might be expanded to permit labor migration that mirrors the free trade of goods and services among the member nations. A North American Union modeled on the European Union could

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85 See JOHNSON, supra note 53.
permit labor migration among Canada, Mexico, and the United States.\textsuperscript{87} Some preliminary steps might be necessary before the implementation of a North American regional migration arrangement. Noting that the European Union invested billions of dollars in the infrastructure of new member nations, one observer argues that the United States must consider an economic adjustment strategy for Mexico to decrease migration pressures and allow for the possibility of more manageable free labor movement into the United States.\textsuperscript{88}

B. Integration of Immigrants into Civil Society

Discussion of immigration reform often neglects the consideration of strategies that might improve the integration of legal, as well as undocumented, immigrants into U.S. society.\textsuperscript{89} Facilitating naturalization of immigrants is one way to provide for the legal integration of immigrants. The U.S. government, however, has been somewhat inconsistent with respect to promoting naturalization as well as other programs, such as ensuring access to federal public benefits programs, which might facilitate immigrant integration.\textsuperscript{90}

Although often focusing on strategies to facilitate immigration enforcement, state and local governments can play an important role in the integration of immigrants into civil


\textsuperscript{88} See Timothy A. Canova, Closing the Border and Opening the Door: Mobility, Adjustment, and the Sequencing of Reform, 5 GEO. J.L. & PUB. POL’Y 341 (2007).

\textsuperscript{89} See, e.g., SECURING THE FUTURE: U.S. IMMIGRANT INTEGRATION POLICY: A READER (Michael Fix ed., 2007).

society.\textsuperscript{91} Issuing driver’s licenses to undocumented immigrants or recipients of deferred action, which has proven to be hotly contested in the states,\textsuperscript{92} is one strategy that would facilitate noncitizen integration. A number of states have passed laws allowing undocumented high school graduates to pay in-state fees at public universities.\textsuperscript{93} Providing additional English-as-a-second-language classes, which are chronically over-enrolled,\textsuperscript{94} and bilingual education\textsuperscript{95} also would facilitate English language acquisition by immigrants and thus immigrant integration.

\textbf{CONCLUSION}

Congress will pass immigration reform. The only questions are when and what form it will take. The answer to both questions is far from clear at this time. This Article outlines some of the possible reforms that Congress might consider in the future.


\textsuperscript{93} See, e.g., Martinez v. Regents of the Univ. of Cal., 241 P.3d 855 (Cal. 2010), \textit{cert. denied}, 131 S. Ct. 2961 (2011) (upholding California law permitting California high school graduates including undocumented immigrants to pay in-state fees at public universities); see Rodriguez, \textit{supra} note 91, at 605–09; Olivas, \textit{supra} note 67.


\textsuperscript{95} See Kevin R. Johnson & George A. Martinez, \textit{Discrimination by Proxy: The Case of Proposition 227 and the Ban on Bilingual Education}, 33 U.C. Davis L. Rev. 1227 (2000) (analyzing elimination of bilingual education in California).