



Immigration and Border Security

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EXECUTIVE SUMMARY

There is a broad-based consensus that the U.S. immigration system is broken. This consensus erodes, however, as soon as the options to reform the U.S. immigration system are debated. Efforts at comprehensive reform in past recent Congresses failed.

The number of foreign-born people residing in the United States is at the highest level in U.S. history and has reached a proportion of the U.S. population – 12.5 percent – not seen since the early 20th century. Of the 38 million foreign-born residents in the United States, approximately 16.4 million are naturalized citizens. The remaining 21.6 million foreign-born residents are noncitizens

The Department of Homeland Security (DHS) recently published a report on the total population of illegal immigrants in the United States finding that the population decreased from 11.6 million to 10.8 million in 2008, down further from 11.8 million in 2007. Most recent DHS estimates place the number of unauthorized alien residents in the United States at 11.5 million in 2011. The Pew Hispanic Center has estimated that there were 11.2 million unauthorized residents in 2010, of which some eight million were in the civilian labor force that year.

Immigration reform in the United States has become a political hot-button issue in recent years. Balancing our nation's founding and immigrant history while upholding the laws of the land has proven challenging for many. The current national debate and rhetoric surrounding the issue has ranged as widely as outright xenophobia to calls for open amnesty and open borders in the name of compassion.

While President Obama and Congressional Democrats promised to make immigration reform a priority in the 111th Congress, a comprehensive overhaul of the nation's immigration laws was crowded out of the legislative agenda.

If a bill is attempted, no matter what approach is taken, it will not be easy. In the past, lawmakers have had to make multiple attempts before being able to pass comprehensive immigration bills into law, regardless of whether Democrats or Republicans have been in charge of either Congress or the White House. The last comparable overhaul in 1986 was five years in the making, and for many, in hindsight, it only exacerbated the current concerns over immigration in the United States.

There are numerous issues out there related to immigration and border security – some region- and state-specific. This chapter is more of a general look at the major issues surrounding immigration and border security in the United States. If you have questions regarding any other related topics, please contact the NRCC.

E-Verify

Under existing law, it is illegal for an employer to knowingly hire, recruit or refer for a fee, or continue to employ an illegal immigrant. Under E-Verify, a largely voluntary employment verification program, employers must review documents presented by new hires to verify their identity and employment authorization and, along with the new hires, must complete I-9 forms. Employers participating in E-Verify then must submit information from the I-9 form about their new hires (name, date of birth, Social Security number, immigration/citizenship status and alien number, if applicable) via the Internet for confirmation. This information is automatically compared with information in the Social Security Administration's (SSA'S) primary database – the Numerical Identification File (Numident). Numident contains records of individuals issued Social Security numbers.

As of March 17, 2012, there were 345,467 employers enrolled in E-Verify, representing more than 1.1 million hiring sites.

Border Security

The smuggling of aliens into the United States constitutes a significant risk to national security and public safety. Because smugglers facilitate the illegal entry of persons into the United States, some maintain that terrorists may use existing smuggling routes and organizations to enter undetected. In addition to generating billions of dollars in revenue for criminal enterprises, alien smuggling can lead to other collateral crimes.

Border security provisions have likewise been part of recent comprehensive reform bills. DHS is charged with protecting U.S. borders from weapons of mass destruction, terrorists, smugglers, and unauthorized aliens. Border enforcement involves securing the many means by which people and goods can enter the country. Operationally, this means controlling the official ports of entry through which legitimate travelers and commerce enter the country, and patrolling the nation's land and maritime borders to prevent illegal entries. There is much debate about whether DHS has sufficient resources to fulfill its border security mission. A number of bills have been introduced that would add resources for Customs and Border Protection (CBP), the lead agency at DHS charged with securing U.S. borders at and between official ports of entry.

Unauthorized Immigration

Unauthorized immigration remains a difficult issue. Mexico remains the largest source country for unauthorized immigration. The sheer number of such aliens has prompted a range of ideas about what should be an appropriate policy response. Some proposals focus on enforcement and include provisions on border security, worksite and other interior enforcement, and employment eligibility verification. Other policy makers support some type of legalization program for unauthorized aliens, sometimes in combination with enforcement measures. Others advocate for mass arrests and deportation, which may be impractical simply due to the incredible logistical burden and cost involved in such an effort. Legalization programs were included in some of the comprehensive immigration reform bills considered in the Senate in the 109th Congress and House in the 110th Congress, and could be contained as part of any new comprehensive overhaul.

State and local law enforcement across the country have begun to tackle their jurisdictions' illegal immigration woes through the Section 287(g) program, which allows Immigration and Customs Enforcement (ICE) to train state and local police to enforce federal immigration laws. Results from the program have been mixed according to some, but generally speaking, support for and growth of the program is expected to continue.

Children of Illegal Immigrants

Children of unauthorized aliens present another challenge for lawmakers. Legislation commonly referred to as the "DREAM Act" has been introduced in the past several Congresses to provide relief to this group in terms of both educational opportunities and immigration status. Unauthorized aliens in the United States are able to receive free public education through high school. They may experience difficulty obtaining higher education for several reasons.

The argument behind such legislation is that despite one's views on the legality of the parents, the children should not be held directly responsible for their parents' decisions. Essentially, the bill would repeal a provision of current law that restricts the ability of states to provide in-state tuition and other financial aid to

unauthorized aliens. They also would enable eligible unauthorized students to adjust to legal permanent resident status in the United States through an immigration procedure known as “cancellation of removal.” There would be no limit under either bill on the number of aliens who could be granted cancellation of removal/adjustment of status.

Birthright Citizenship

Another issue involving the children of unauthorized aliens is that of birthright citizenship. These children are sometimes derogatorily referred to as “anchor babies.” The 14th Amendment, section 1, of the U.S. Constitution states: “All persons born or naturalized in the United States and subject to the Jurisdiction thereof, are Citizens of the United States and of the State wherein they reside.”

Farm Labor and Guest Worker Programs

The connection between farm labor and immigration policies is a longstanding one, particularly with regard to U.S. employers’ use of workers from Mexico. It is estimated that a little more than one-half of the seasonal agricultural workforce are not authorized to be employed in the United States. Crop growers contend that there is a shortage of native-born farm workers and that farmers would rather not employ unauthorized workers because doing so puts them at risk of incurring penalties.

At present, the United States has two main programs for temporarily importing low-skilled workers, sometimes referred to as guest workers. Agricultural guest workers enter through the H-2A visa program, and other guest workers enter through the H-2B visa program. Employers interested in importing workers under either program must first apply to the U.S. Department of Labor for a certification that U.S. workers capable of performing the work are not available and that the employment of alien workers will not adversely affect the wages and working conditions of similarly employed U.S. workers.

A RECENT LEGISLATIVE HISTORY IN BRIEF

The United States has always welcomed immigrants who come to this country legally and honestly. Those who seek freedom and the promises and opportunities of the American Dream have and should be encouraged to come to our shores. The founding principles of this nation are clear; an individual of any ethnic heritage, economic status, racial or religious background can become an American and experience its promise of freedom.

However, the successful melding of diverse cultures is only possible when immigrants are assimilated in and educated about our country's political principles, history, institutions, and civic culture. Yes, this is a nation of immigrants, but we should first be Americans, sharing the benefits, responsibilities, and the deep national patriotism that comes with citizenship.

Immigration reform in the United States has become a political hot-button issue in recent years. Balancing our nation's founding and immigrant history while upholding the laws of the land has proven challenging for many. The current national debate and rhetoric surrounding the issue has ranged as widely as outright xenophobia to calls for open amnesty and open borders in the name of compassion.

The unavoidable dilemma for all attempts to overhaul immigration law is that the issue divides Democrats and Republicans against themselves, pitting border state lawmakers against those in the interior, for instance, and those with large immigrant constituencies or a high dependency on immigrant labor against those without.

In both the 109th and 110th Congresses, Congress made a run at making comprehensive changes in the rules that govern who can enter the United States, who can work here, what penalties are imposed on those who ignore the law and hire undocumented workers, and what to do with the people believed to be in the country illegally. Estimates in the past have placed the illegal immigrant population at 12 million. The Department of Homeland Security (DHS) recently published a report on the total population of illegal immigrants in the United States finding that the population decreased from 11.6 million to 10.8 million in 2008, down further from 11.8 million in 2007. Most recent DHS estimates place the number of unauthorized alien residents in the United States at 11.5 million in 2011. The Pew Hispanic Center has estimated that there were 11.2 million unauthorized residents in 2010, of which some eight million were in the civilian labor force that year.

In 2006, with a Republican-led Congress and again in 2007, with a Democrat-led Congress, comprehensive immigration bills that combined border and worksite enforcement with a plan to grant some form of legal status to undocumented immigrants and manage future flows of immigration, fell apart. In both instances, these legislative attempts met strenuous opposition from forces that oppose open borders, from those who fear that current citizens will be supplanted in the workforce by immigrants, and from those on the other side who are opposed to putting too much enforcement of the law ahead of a humanitarian result for those already here.



**“Give me your tired, your poor,
your huddle masses yearning to
breathe free, the wretched refuse
of your teeming shore. Send
these, the homeless, tempest-
tost to me, I lift my lamp beside
the golden door!”**

~ Emma Lazarus, “The New
Colossus” – engraved in bronze at
the Statue of Liberty



While President Obama and Congressional Democrats promised to make immigration reform a priority in the 111th Congress, a comprehensive overhaul of the nation's immigration laws was crowded out of the legislative agenda.

Many argue that any immigration reform bill with a chance of becoming law would have to be modeled after the 2007 legislative attempt, which incorporated expanded temporary visa programs, a pathway to citizenship for illegal immigrants already in the country, and stepped-up enforcement on the border and in the workplace. Selection of a system for verifying employees' immigration status is likely to be a stumbling block. Some have indicated that they would prefer to scrap E-Verify, the government's current program, for a system based on biometric data.

Labor unions, once fiercely divided on immigration, have united on a proposal to make visa quotas subject to the determinations of an advisory board that watches economic indicators. This stance could alienate businesses that have backed past proposals for overhauling immigration law.

If a bill is attempted, no matter what approach is taken, it will not be easy. In the past, lawmakers have had to make multiple attempts before being able to pass comprehensive immigration bills into law, regardless of whether Democrats or Republicans have been in charge of either Congress or the White House. The last comparable overhaul in 1986 was five years in the making, and for many, in hindsight, it only exacerbated the current concerns over immigration in the United States.

UNITED STATES OATH OF ALLEGIANCE

“I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which I have heretofore been a subject or citizen;

that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same;

that I will bear arms on behalf of the United States when required by the law;

that I will perform noncombatant service in the Armed Forces of the United States when required by the law;

that I will perform work of national importance under civilian direction when required by the law; and that I take this obligation freely without any mental reservation or purpose of evasion; so help me God.”

ELECTRONIC EMPLOYMENT ELIGIBILITY VERIFICATION (E-VERIFY)

Employment eligibility verification and worksite enforcement have been constant issues in the debates over comprehensive immigration reform. They are widely viewed as essential components of a strategy to reduce unauthorized immigration.

Under existing law, it is illegal for an employer to knowingly hire, recruit or refer for a fee, or continue to employ an illegal immigrant. Additionally, the IIRIRA of 1996 directed the Attorney General to conduct three largely voluntary pilot programs for electronic employment eligibility confirmation. After examining documents and completing what are called I-9 forms, employers participating in a pilot program would seek to confirm the identity and employment eligibility of their new hires. IIRIRA tasked the Attorney General with establishing a confirmation system to respond to inquiries made by participants in these pilot programs “at any time through a toll-free telephone line or other toll-free electronic media concerning an individual’s identity and whether the individual is authorized to be employed.” The former Immigration and Naturalization Service (INS) had initial responsibility for administering the pilot programs. In 2003, DHS assumed this responsibility.

The Basic Pilot program, the first of the three IIRIRA employment verification pilots to be implemented and the only one still in operation, began in November 1997 in the five states with the largest unauthorized alien populations at the time – California, Florida, Illinois, New York and Texas. In December 2004, the program became available nationwide, although it remained mostly voluntary – under IIRIRA, violators of unlawful employment laws or those who engage in unfair immigration-related employment practices may be required to participate.

Additionally, IIRIRA also states that each department of the federal government and each Member of Congress, each officer of Congress and the head of each legislative branch agency “shall elect to participate in a pilot program.” In August 2007, the Office of Management and Budget (OMB) issued a memorandum requiring all federal departments and agencies to begin verifying their new hires through E-Verify as of Oct. 1, 2007. It has changed over the years – for example, since July 2005, it has been entirely Internet-based. It is currently administered by DHS’s U.S. Citizenship and Immigration Services (USCIS). It was also renamed E-Verify by the Bush Administration in 2007. Congress has continued to extend the life of the E-Verify program and at the time of this writing, it is currently extended through Sept. 30, 2012.

Under E-Verify, employers must review documents presented by new hires to verify their identity and employment authorization and, along with the new hires, must complete I-9 forms. Employers participating in E-Verify then must submit information from the I-9 form about their new hires (name, date of birth, Social Security number, immigration/citizenship status and alien number, if applicable) via the Internet for confirmation. This information is automatically compared with information in the Social Security Administration’s (SSA’S) primary database – the Numerical Identification File (Numident). Numident contains records of individuals issued Social Security numbers.

If the information submitted for employees identifying themselves as citizens matches the information in Numident and SSA records confirm citizenship, the employer is notified that the employee’s work authorization is verified. If it matches the Numident information, but SSA records cannot confirm citizenship, the information is automatically checked against USCIS naturalization databases. If this check confirms citizenship, the employer is notified that the employee’s work authorization is verified. If the employer-submitted information about a new hire does not match Numident information, the employer is notified that the employee has received an SSA tentative nonconfirmation finding.

If the information submitted for employees self-identifying as noncitizens matches SSA records, the information is sent electronically to USCIS for verification – if it is confirmed, the employer is notified. If it is not confirmed, an Immigration Status Verifier (ISV) at USCIS checks additional databases. If the ISV is not able to confirm work authorization, the employer is notified that the employee has received a USCIS tentative nonconfirmation finding.

Employers are required to notify their employees about SSA and USCIS tentative nonconfirmation findings. Employers violating prohibitions on unlawful employment may be subject to civil and/or criminal penalties. Enforcement of these provisions is termed “worksite enforcement.”

E-Verify has been growing in recent years. On Jan. 31, 2006, there were 5,272 employers enrolled in the program, representing 22,710 hiring sites. As of March 17, 2012, there were 345,467 employers enrolled in E-Verify, representing more than 1.1 million hiring sites. Based on the number of firms in the United States according to 2009 U.S. Census Bureau data, these participant employers represented about six percent of U.S. employers. E-Verify continues to grow, with average weekly enrollment of more than 2,000 new employers in FY 2012.

BORDER SECURITY

The smuggling of aliens into the United States constitutes a significant risk to national security and public safety. Because smugglers facilitate the illegal entry of persons into the United States, some maintain that terrorists may use existing smuggling routes and organizations to enter undetected. In addition to generating billions of dollars in revenue for criminal enterprises, alien smuggling can lead to other collateral crimes.

Border security provisions have likewise been part of recent comprehensive reform bills. DHS is charged with protecting U.S. borders from weapons of mass destruction, terrorists, smugglers, and unauthorized aliens. Border enforcement involves securing the many means by which people and goods can enter the country. Operationally, this means controlling the official ports of entry through which legitimate travelers and commerce enter the country, and patrolling the nation's land and maritime borders to prevent illegal entries.

At ports of entry, Customs and Border Protection (CBP) officers are responsible for conducting immigration, customs, and agricultural inspections on individuals entering the United States. Along the border between ports of entry, the U.S. Border Patrol (USBP), a component of CBP, enforces U.S. immigration law and other federal laws. In the course of discharging its duties, the USBP patrols more than 8,000 miles of U.S. international borders with Mexico and Canada and the coastal waters around Florida and Puerto Rico.

There is much debate about whether DHS has sufficient resources to fulfill its border security mission. A number of bills have been introduced that would add resources for Customs and Border Protection (CBP), the lead agency at DHS charged with securing U.S. borders at and between official ports of entry.

Congress has repeatedly shown interest in the deployment of barriers along the U.S. international land border. In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), which, among other provisions, explicitly gave the Attorney General broad authority to construct barriers along the border and specified where fencing was to be constructed. In 2008, Congress required DHS to construct reinforced fencing or other barriers along no less than 700 miles of the Southwest border, in locations where fencing is deemed most practical and effective. In carrying out this requirement, the Secretary of Homeland Security is also instructed to identify either 370 miles or "other mileage" along the Southwest border where fencing would be most practical and effective in deterring smugglers and illegal aliens, and to complete construction of fencing in identified areas.

The continued construction of the border fence and other border security measures from "virtual fence" measures such as unmanned aerial vehicles and other electronic methods, to increased border patrol agents, to a debate over the merits of a National Guard presence along the border can be expected to be a part of any future immigration reform debate.

UNAUTHORIZED IMMIGRATION

Unauthorized immigration remains a difficult issue. Mexico remains the largest source country for unauthorized immigration. The sheer number of such aliens has prompted a range of ideas about what should be an appropriate policy response. Some proposals focus on enforcement and include provisions on border security, worksite and other interior enforcement, and employment eligibility verification. Other policy makers support some type of legalization program for unauthorized aliens, sometimes in combination with enforcement measures. Others advocate for mass arrests and deportation, which may be impractical simply due to the incredible logistical burden and cost involved in such an effort. Legalization programs were included in some of the comprehensive immigration reform bills considered in the Senate in the 109th Congress and House in the 110th Congress, and could be contained as part of any new comprehensive overhaul.

State and local law enforcement across the country have begun to tackle their jurisdictions' illegal immigration woes through the Section 287(g) program, which allows Immigration and Customs Enforcement (ICE) to train state and local police to enforce federal immigration laws. Results from the program have been mixed according to some, but generally speaking, support for and growth of the program is expected to continue.

Additionally, simplifying the bureaucracy and red tape involved in legally becoming a citizen could also help to mitigate against future illegal immigration.

Country of Birth of the Unauthorized Immigrant Population: January 2011 and 2000

Country of birth	Estimated population in January		Percent of total		Percent change	Average annual change
	2011	2000	2011	2000	2000 to 2011	2000 to 2011
All countries	11,510,000	8,460,000	100	100	36	280,000
Mexico	6,800,000	4,680,000	59	55	45	190,000
El Salvador	660,000	430,000	6	5	55	20,000
Guatemala	520,000	290,000	5	3	82	20,000
Honduras	380,000	160,000	3	2	132	20,000
China	280,000	190,000	2	2	43	10,000
Philippines	270,000	200,000	2	2	35	10,000
India	240,000	120,000	2	1	94	10,000
Korea	230,000	180,000	2	2	31	—
Ecuador	210,000	110,000	2	1	83	10,000
Vietnam	170,000	160,000	2	2	10	—
Other countries	1,750,000	1,940,000	15	23	-10	(20,000)

— Represents less than 5,000.
 Detail may not sum to totals because of rounding.
 Source: U.S. Department of Homeland Security.

CHILDREN OF ILLEGAL IMMIGRANTS

Development, Relief and Education for Alien Minors (DREAM) Act

Children of unauthorized aliens present another challenge for lawmakers. Legislation commonly referred to as the “DREAM Act” has been introduced in the past several Congresses to provide relief to this group in terms of both educational opportunities and immigration status. Unauthorized aliens in the United States are able to receive free public education through high school. They may experience difficulty obtaining higher education for several reasons. Among these reasons is a provision enacted in 1996 (as part of the Illegal Immigration Reform and Immigrant Responsibility Act, or IIRIRA) that prohibits states from granting unauthorized aliens certain postsecondary educational benefits on the basis of state residence, unless equal benefits are made available to all U.S. citizens. This prohibition is commonly understood to apply to the granting of “in-state” residency status for tuition purposes. Unauthorized alien students also are not eligible for federal student financial aid. More broadly, as unauthorized aliens, they are not legally allowed to work and are subject to being removed from the country.

The argument behind such legislation is that despite one’s views on the legality of the parents, the children should not be held directly responsible for their parents’ decisions. Essentially, the bill would repeal a provision of current law that restricts the ability of states to provide in-state tuition and other financial aid to unauthorized aliens. They also would enable eligible unauthorized students to adjust to legal permanent resident status in the United States through an immigration procedure known as “cancellation of removal.” There would be no limit under either bill on the number of aliens who could be granted cancellation of removal/adjustment of status.

DREAM Act in 111th Congress: In the previous 111th Congress, the House approved DREAM Act language as part of an unrelated bill, the Removal Clarification Act of 2010 (H.R. 5281). This language would have enabled eligible unauthorized students to adjust to U.S. legal permanent resident (LPR) status in the United States, but it would have established a different pathway than most of the other bills – it would not have repealed the 1996 IIRIRA and, thus, would not have eliminated the statutory restriction on state provision of postsecondary educational benefits to unauthorized aliens.

Under this language, an eligible alien could have gone through the cancellation of removal procedure and been granted conditional nonimmigrant status. Unlike other DREAM Act bills in the 111th Congress, the alien’s status would not have been adjusted to that of a conditional LPR – it would have enabled an alien to affirmatively apply for cancellation of removal without first being replaced in removal proceedings and also would have established a deadline for submitting initial cancellation of removal applications. To be eligible for cancellation of removal/conditional nonimmigrant status under this language, an alien would have needed to demonstrate that he or she had been physically present in the United States for a continuous period of not less than five years immediately preceding the date of enactment of the legislation, had not yet reached age 16 at the time of initial entry, had been a person of good moral character since the date of initial entry and was younger than age 30 on the date of enactment. The alien would also have had to demonstrate that he or she had been admitted to an institution of higher education in the U.S. or had earned a high school diploma or the equivalent in the United States – and that he or she had never been under a final administrative or judicial order of exclusion, deportation or removal.

DREAM Act in 112th Congress: Similar, but not identical (to each other), Senate and House DREAM Act bills have been introduced in the 112th Congress. Although there are differences between the two, both are entitled the DREAM Act of 2011 – S. 952 and H.R. 1842. Both take a step back from some of the revisions

incorporated in the DREAM Act measure approved by the House in the 111th Congress, but also include some more “traditional” DREAM Act provisions. Another House bill – H.R. 3823 – would legalize the status of unauthorized alien students more closely resembling the version of the DREAM Act approved by the House in 2010.

H.R. 1842 would repeal IIRIRA thereby eliminating the restriction on state provision of postsecondary educational benefits to unauthorized aliens. It also would enable eligible unauthorized students to adjust to LPR states in the United States through cancellation of removal. An alien would have to demonstrate that he or she had been physically present continuously in the United States for not less than five years immediately preceding the date of enactment of the act; was age 15 or younger at the time of initial entry; had been a person of good moral character since the time of initial entry and had been admitted to an institution of higher education in the United States or had earned a high school diploma or the equivalent in the United States. Also, the alien would need to be age 32 or younger.

Birthright Citizenship

Another issue involving the children of unauthorized aliens is that of birthright citizenship. These children are sometimes derogatorily referred to as “anchor babies.” The 14th Amendment, section 1, of the U.S. Constitution states: “All persons born or naturalized in the United States and subject to the Jurisdiction thereof, are Citizens of the United States and of the State wherein they reside.”

In 1898, the U.S. Supreme Court ruled on whether this applies to children born of non-citizens in *U.S. v. Wong Kim Ark*. According to the Court’s majority opinion, the 14th Amendment’s citizenship clause had to be interpreted in light of English common law tradition that had excluded from citizenship at birth only two classes of people: (1) children born to foreign diplomats and (2) children born to enemy forces engaged in hostile occupation of the country’s territory. The majority held that the “subject to the jurisdiction” phrase in the 14th Amendment specifically encompassed these conditions.

Then in 1982, the U.S. Supreme Court in *Phyllis v. Doe* reaffirmed that the 14th Amendment’s phrases “subject to the jurisdiction thereof” and “within its jurisdiction” were essentially equivalent and that both referred primarily to physical presence. It held that that illegal immigrants residing in a state are “within the jurisdiction” of that state, and added in a footnote that “no plausible distinction with respect to Fourteenth Amendment ‘jurisdiction’ can be drawn between resident aliens whose entry into the United States was lawful, and resident aliens whose entry was unlawful .”

However, the Supreme Court has never directly ruled on the subject, but due to the above decisions many assume that children born in the United States to illegal immigrant parents are entitled to birthright citizenship via the 14th Amendment. There are those that believe that Congress could exercise its Constitutional powers (Article 1, section 8) to prevent birthright citizenship for the children of illegal immigrants, but such a law would certainly be the subject of judicial review by the U.S. Supreme Court.

The term “anchor baby” has become a derogatory term to describe a child born to unauthorized aliens within the United States. The term alludes that through birthright citizenship, the child will one day facilitate the naturalization of the parents through the principle in immigration law called family reunification.

FARM LABOR AND GUEST WORKER PROGRAMS

The connection between farm labor and immigration policies is a longstanding one, particularly with regard to U.S. employers' use of workers from Mexico. It is estimated that a little more than one-half of the seasonal agricultural workforce are not authorized to be employed in the United States. Crop growers contend that there is a shortage of native-born farm workers and that farmers would rather not employ unauthorized workers because doing so puts them at risk of incurring penalties.

However, opponents say crop growers prefer unauthorized workers because they are in a weak bargaining position and thus a cheaper workforce. Furthermore, they contend that if the supply of unauthorized workers were reduced, farmers could adjust to a smaller workforce by introducing more efficient technologies and management practices, and by raising wages. Opponents argue that this may entice more legal U.S. workers to accept farm jobs in the first place.

Growers counter that position citing that further mechanization would be difficult for some crops, and that higher wages would make the U.S. industry uncompetitive in world markets.

Both opinions are valid but largely untested. Perishable crop growers have rarely, if ever, operated without unauthorized foreign-born workers. Whether there would be an adequate supply of authorized U.S. farm workers if new technologies or management practices were developed, whether more U.S. workers would be willing to become farm workers if wages were raised, and whether wage increases would make the industry uncompetitive in the world marketplace are all currently unanswerable questions.

At present, the United States has two main programs for temporarily importing low-skilled workers, sometimes referred to as guest workers. Agricultural guest workers enter through the H-2A visa program, and other guest workers enter through the H-2B visa program. Employers interested in importing workers under either program must first apply to the U.S. Department of Labor for a certification that U.S. workers capable of performing the work are not available and that the employment of alien workers will not adversely affect the wages and working conditions of similarly employed U.S. workers.

A variety of bills have been introduced in recent Congresses to make changes to the H-2A and H-2B programs and the "H" visa category generally, and to establish new temporary worker visas. Both farm and labor advocates criticize the H-2A program in its current form, saying that the program is overly cumbersome and does not meet their labor needs. Labor advocates argue that the program provides too few protections for U.S. workers.

Another proposal has been the establishment of a new "guest worker program." The term guest worker has typically been applied to foreign temporary low skilled laborers, often in agriculture or other seasonal employment. Supporters of a large-scale guest worker program contend that such a program would help reduce unauthorized immigration by providing a legal alternative for prospective foreign workers. Critics reject this reasoning and instead maintain that a guest worker program would likely exacerbate the problem of illegal immigration; they argue, for example, that many guest workers would fail to leave the country at the end of their authorized period of stay.

In the past, guest worker programs have been established in the United States to address worker shortages during times of war. During World War I, for example, tens of thousands of Mexican workers performed mainly agricultural labor as part of a temporary worker program. The Bracero program, which began during World War II and lasted until 1964, brought several million Mexican agricultural workers into the United

States. At its peak in the late 1950s, the Bracero program employed more than 400,000 Mexican workers annually.

Yet, the question of a new guest worker program is extremely controversial. The size of the current resident unauthorized alien population in the United States, along with continued unauthorized immigration at the U.S.-Mexico border, are major factors cited in support of a new temporary worker program. At the same time, the importance of enforcing immigration law and not rewarding illegal aliens with any type of legalized status are primary reasons cited in opposition to such a program. Therefore, bridging this divide in support for a guest worker program as part of a comprehensive immigration overhaul will prove difficult.

ARIZONA IMMIGRATION LAW

On April 23, 2010, Arizona enacted legislation intended

“...to make attrition through enforcement the public policy of all state and local government agencies in Arizona. The provisions of this act are intended to work together to discourage and deter the unlawful entry and presence of aliens and economic activity by persons unlawfully present in the United States.”

By doing so, Arizona arguably placed itself in the vanguard of recent attempts to test the legal limits of greater state involvement in immigration enforcement. Below are key provisions, in brief, of Arizona’s immigration law as enacted:

- Makes it a crime under state law to be in the country illegally by specifically requiring immigrants to have proof of their immigration status. Violations are a misdemeanor punishable by up to six months in jail and a fine of up to \$2,500. Repeat offenses would be a felony.
- Requires police officers to “make a reasonable attempt” to determine the immigration status of a person if there is a “reasonable suspicion” that he or she is an illegal immigrant. Race, color or national origin may not be the only things considered in implementation. Exceptions can be made if the attempt would hinder an investigation.
- Allow lawsuits against local or state government agencies that have policies that hinder enforcement of immigration laws. Would impose daily civil fines of \$1,000-\$5,000. There is pending follow-up legislation to halve the minimum to \$500.
- Targets hiring of illegal immigrants as day laborers by prohibiting people from stopping a vehicle on a road to offer employment and by prohibiting a person from getting into a stopped vehicle on a street to be hired for work if it impedes traffic.

Supporters of the law argue that federal enforcement of immigration law has not adequately deterred the migration of unauthorized aliens into Arizona resulting in exorbitant violence along both sides of the U.S.-Mexico border and an uptick of criminal acts by illegal aliens within the state of Arizona. They argued that state action is both necessary and appropriate to combat the negative effects of unauthorized immigration. Opponents argue that Arizona’s law will be expensive and disruptive, will be susceptible to uneven application and can undermine community policing by discouraging cooperation with state and local law enforcement.

Following the enactment of the law, but prior to its scheduled date to go into effect (July 29, 2010), the U.S. Department of Justice (DOJ) and a number of private entities filed separate lawsuits challenging the legislation. The central argument made in the lawsuits was that aspects of the law both separately and in conjunction are preempted by federal law and are therefore unenforceable.

Following several court actions and appeals, Arizona petitioned the U.S. Supreme Court to hear an appeal of the U.S. Court of Appeals for the Ninth Circuit decision which affirmed a prior court’s injunction order against the law. On Dec. 12, 2011, the Supreme Court granted certiorari and is currently considering the appeal. The Court’s decision could determine the permissibility not only of the challenged provisions of the

law, but also of subsequent measures enacted by Alabama, South Carolina and Utah, which the federal government has also challenged on the grounds that they are preempted.

Editor's Note: *At the time of this writing, the Supreme Court was still considering this case. Please contact the NRCC for any relevant updates or other information.*

IMMIGRATION AND BORDER SECURITY TALKING POINTS

- The United States was established on principles that support the welcoming of new residents to its shores to learn and embrace American civic culture and political institutions through the process of immigration and naturalization.
- We must maintain and increase efforts to enhance border security by ensuring that our state, federal and local law enforcement has the tools that they need to do their jobs.

ADDITIONAL INFORMATION AND RESOURCES

- Department of Homeland Security (DHS) – <http://www.dhs.gov/>
- House Homeland Security Committee – <http://homeland.house.gov/>
- House Judiciary Committee – <http://judiciary.house.gov/>
- U.S. Customs and Border Protection (CBP), DHS – <http://www.cbp.gov/>
- U.S. Immigration and Customs Enforcement (ICE), DHS – <http://www.ice.gov/>