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What's Ahead for Immigration Reform, 2010 Style

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President Obama, Secretary Napolitano, Congressional leaders and the news media all refer to our immigration system as "broken."

When many people think of immigration's brokenness,

they think of undocumented aliens. They think of borders out of control. They think of the jobs that foreign workers take and that many Americans can no longer get.

Immigration is a system and a reflection of our country's values and needs, as well as our current political climate. It will be a hot topic during the cold winter months of 2010. Like health care and war, immigration has advocates—and enemies—on every possible side of the debate.

Debate concerning immigration reform is based upon public and personal values. Hopefully, in 2010, that debate will result in comprehensive immigration reform that reflects the American values of opportunity, humanity and diversity at their best.

Where We've Been

An alien (a term of art) enters the system by walking across the border, by filing a petition seeking a visa or by entering the United States at a port of entry. Through the immigration system, hundreds of millions of people come to the United States or seek to do so every year. While most aliens who enter the United States every year leave and return home uneventfully, many come to stay and remain here legally. Some become citizens and remain here the rest of their lives. Others overstay, commit crimes and are removed.

The year 1986 was a watershed for immigration. In that year, the Immigration Reform and Control Act (IRCA) was passed. The goals of IRCA were to "reform" a system then viewed as broken

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and "control" the inflow of undocumented aliens into the United States. The IRCA created such concepts as amnesty and employer sanctions. Millions of undocumented aliens legalized their status and many went on to become U.S. citizens.

The thought behind the sanctions was to stop the influx of aliens by imposing restrictions on employers of undocumented alien workers who in turn would stop hiring and employing undocumented workers. As everyone who has secured employment since November 6, 1986,

knows, all new hires must fill out an Employment Verification Form, the I-9. This is the tool used to encourage lawful employment and discourage unlawful employment. Since then, the government has added a generally voluntary but controversial electronic verification system, E-Verify, to assist employers in determining who is employment eligible and who is not. There have been loudly trumpeted enforcement actions, and some employers have received stiff civil and criminal penalties.

How Effective?

Did IRCA stop aliens from coming? No, and that's not all. Fences have been built on the border, thousands of new Border Patrol agents have been hired and aliens who are caught are returned, some rather roughly. This, of course, deterred the flow of undocumented aliens, but what really slowed their coming in the past year or two has been the economic downturn. With no job awaiting, why come?

IRCA did not stem the tide of illegal immigration or provide reforms that met the nation's long-term immigration needs. Enforcement alone does not address a broken immigration system, but it is one part.

Where Immigration Is Heading

As we look to immigration reform and control in 2010, let me quote Secretary Napolitano: "I talk about immigration reform, I'm referring to what I call the 'three legged stool' that includes a commitment to serious and effective enforcement, improved legal flows for families and workers and a firm but fair

way to deal with those who are already here."

- **Enforcement.** Serious and effective enforcement needs to include enhanced border control, sanctions against unscrupulous employers and an accurate E-verify system, among other things. It should include speedy and fair hearings for those subject to removal. But other troubling issues ahead include whether states and cities should pass their own immigration-related laws and have local police be the enforcers; whether to increase the number of prison beds for detained aliens beyond the 30,000 currently in service; whether to limit "due process of law" to those aliens in removal proceedings; or to include a mandatory national identity card. Should undocumented aliens have the right to earn legal status, or simply be removed? Should remaining in the United States be fraught with danger, isolation and in some cases, starvation? Should no undocumented aliens be able to continue to work or receive health care in the United States (except, of course, for Anna, our nanny, whom the kids love)?
- **Shorter Timeframes for Families and Workers.** Through family members who are citizens or permanent residents, aliens may secure immigrant visas to come to the United States or remain here as permanent residents. Not

all family relationships permit reunification and not all families are reunited quickly. Spouses and parents of U.S. adult citizens are "immediate relatives" and can relatively quickly secure permanent residency ("green card") to live and work in the United States. The brothers and sisters of U.S. citizens have to wait *decades*. Visas are not available for spouses or children under 21 of permanent residents for three years or more. Such long waits can result in family destruction rather than family reunification.

- **Delays.** Employment-based immigration entails delays and visa unavailability that is as discouraging as the family-based delays. Most employment-based immigrant visas require a petitioning employer that needs the services of a skilled alien. Those who invest \$1 million and create more than 10 jobs in the United States, those whose work advances the national interest of the United States and those who are considered "extraordinary" do not need an employer sponsor, while all others do. A complicated and cumbersome system tests the labor market and vets the alien employee to determine if he or she is taking a job away from a U.S. worker. Once the Department of Labor decides that the alien is needed—and that takes one to two years—it could be another five years before the alien could seek a green card.

Quite simply, the process and the delays in the system are a disincentive for needed alien workers to come and stay in the United States. Perhaps more important, the system deprives U.S. employers of workers needed to ensure America's competitiveness in a global market place.

- **Improved Legal Flows.** Improved legal flows of families and workers include realistic vetting of workers and balancing supply of visas with domestic needs for those workers. It also includes being humane about offering family reunification so the family members can live long enough to be reunited. Does it include eliminating employment-based immigration altogether? Does it include limiting birth right citizenship? How about eliminating visas for adult siblings of U.S. citizens?

We need workable solutions that uphold our nation's values and move us forward together. We need to fix our system. How to get there will be the subject of debate over the upcoming months. Stay tuned.

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