

IMMIGRATION REFORM, WHAT TO EXPECT, PART I

By Michael Phulwani, Esq. and David Nachman, Esq.

As the fiscal cliff deal left the debt ceiling and so-called sequestration disputes unresolved, pundits speculated that immigration might get pushed to the side. But congressional aides, lawmakers, and advocates say the plans are on track and we should expect to see the first concrete steps sometime between President Obama's inauguration on Jan. 20 and his State of the Union address a couple weeks later.

Work began on a bill following the elections among a bipartisan group of senators, dubbed the "gang of eight" by Politico, but which has now shrunk in size according to Washington insiders. The group is expected to take the first public step in the process by releasing a set of principles sometime after the inauguration. Full legislative language is not expected until March or April, according to the Senate aide and Beltway advocates, and a vote probably won't come down until June at the earliest.

Both parties start the year in the red on immigration.

Republicans have for years blocked all action on immigration reform, including the passage of the DREAM Act in 2010. Democrats, for their part, also have some making up to do. Obama gained political points from progressives and Latinos in 2012 for using his executive power to protect some immigrants, most notably by granting work permits and permission to stay in the country to DREAM Act youth. But his administration also deported historic numbers in the past four years.

Just before Christmas, the Department of Homeland Security announced that in 2012, 409,000 people were deported, more than in any other year recorded. And 90,000 of these deportees were the parents of U.S. citizens, according to government data.

So both parties say they now want to do right by immigrants, and immigration rights advocates say they're gearing up for a ground game to push for the broadest possible legislation. "All our efforts have to be focused on comprehensive reform like a laser beam," said Sylvia Ruiz, head of the Immigrant Justice Campaign for the two million-member SEIU labor union. "The goal is winning federal reform in this legislative cycle."

What's inside the bill will make all the difference. The Senate deliberations remain in the weeds and insiders say there's nothing yet in writing. But, there are some things that we know, at least about the parameters. Over the past six years of failed legislative efforts at reform, comprehensive bills have involved a path to legal status for at least some unauthorized immigrants; a reworked legal system for new immigrants and guest workers; and shifts in enforcement to stop undocumented

immigrants at the border, deport those in the interior and stop employers from hiring unauthorized workers.

Legalization

Arguably the most important item immigration reformers hope to solve is the presence of over 11 million people who live in the country without papers, and thus often without access to the benefits and responsibilities of legal residency or citizenship, but with the threat of deportation and exploitation by employers. Lawmakers intend to legalize at least some undocumented immigrants.

But what legalization will look like is entirely up for debate.

First and foremost, there's a question of whether the path to legalization will lead ultimately to citizenship or, instead, some kind of extended residency.

Advocates for an expansive citizenship program note that more Latino, Asian, Caribbean, and other citizens of color equal more voters who tend to vote Democrat, which Republicans have cause to resist. Indeed, in November, Republicans introduced a bill they called the Achieve Act, a GOP alternative to the DREAM Act. The bill, which didn't become law, would have granted legal status, but no path to citizenship to undocumented young people. Republicans could push a broader legalization bill that similarly denies access to citizenship.

Democrats are unlikely to put their weight behind a legalization plan that does not include some route to citizenship. And insiders say that at least in the opening gambits from the White House and the bi-partisan Senate group, proposals will include a path to citizenship. "Legalization with a path to citizenship is not all that controversial," the Democratic aide told me about the initial deliberations.

Even the most expansive immigration legalization plan would not create a path for all of the 11 million undocumented immigrants in the U.S. Those who have been deported in the past and returned to the country will almost certainly be excluded, as will immigrants who've been convicted of felonies and some misdemeanors.

Congress could create a path to citizenship only for a limited group of immigrants, like the DREAMers, for example. Likewise, if lawmakers do legislate a citizenship plan, they'll have to construct the path—and the length and treachery of the journey to citizenship matters. In past proposals for immigration reform, legislators have put forward plans in which it would take up to a decade to gain citizenship. In other iterations, the process has been tied to steady employment. Advocates note that in this time of high joblessness and unsteady work, that's something of a set up for failure.

'Future Flow'

Though most conversations about immigration reform focus on undocumented immigrants who are already here, lawmakers are also grappling with what to do about those who want to come in the future, or the so-called "future flow."

"A future flow program is probably most controversial part right now," the Democratic aide said.

New immigrants tend to be treated as two distinct groups: high-skilled and low-skilled. Most agree that "high-skilled" and often "higher-wage" workers should be allowed in. In November, Republicans in the House passed the STEM Jobs Act, which would have granted permanent residency to immigrants who receive masters and doctorate degrees from U.S. universities in the sciences. The bill aligned with Obama's own desire, offered in last year's debates, to try to keep well-educated foreigners in the U.S., rather than sending them "home to invent new products and create new jobs somewhere else."

But the bill died in the Senate because, in order to make room for the new visas, it would have cut spots in the Diversity Immigrant Visa Program, a lottery system that tends to help lower-skilled immigrants, largely from African nations. Democrats were unwilling to make such a trade.

This Democratic reticence aside, generosity toward low-skilled immigrants has not been a feature of American Immigration law. The heftiest piece of the future flow is the question of temporary workers, or guest workers. Each year hundreds of thousands enter the country on temporary visas to work in hotels, construction sites, factories, and food processing plants.

They're often subjected to sub-par labor conditions and lack strong workplace protections. Unions, immigrant rights advocates and many Democrats say that is because the current structure of guest worker programs ties visas to having and keeping a job.

"Workers are tied to one employer in terms of their visa and as soon as they are no longer employed, they are deportable," said Saket Soni, director of the National Guestworker Alliance. "They are legal only as long they comply with their employer. That's the fundamental rule of the game."

Many argue that guest worker programs like the one that exists should be replaced with a system that puts the ownership of visas in immigrants' hands, not in those of employers. But business interests push back, arguing that the guest worker program is vital to the health of the small business economy. Some business owners and their

representatives like the Chamber of Commerce say there simply are not enough U.S. workers who want the jobs and the businesses require a contingent work force to fill labor needs.

“It comes down to a back and forth between business and labor,” said the Democratic aide.

For more information, please feel free to contact the Immigration and Nationality Lawyers at the NPZ Law Group at 201-670-0006 or by e-mailing us at info@visaserve.com.

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