Why No One Wants Immigration Reform

Donald S. Dobkin, Central Michigan University
WHY NO ONE WANTS IMMIGRATION REFORM

In a country blessed with so many brilliant and talented individuals, it is truly startling that it is so difficult to reform our deeply flawed immigration system.

Why is this so one might ask? To be sure, this is not an easy question to answer. A good starting point, however, would be to highlight the sobering fact that the last major presidential candidate to actively support comprehensive reform with an immigration amnesty lost the election.

That presidential candidate, Senator John McCain, was one of the original sponsors of the Comprehensive Immigration Reform Act, yet by 2007 had become a staunch opponent of amnesty as he realized his pro-immigration stance was a death knell within the Republican Party, and likely with a large part of the electorate. President Obama, while he gave lip service to comprehensive immigration reform, actually spent little political capital trying to push it through a gridlocked Congress during his first term, and instead used administrative means to implement a limited version of the DREAM Act for long-term undocumented immigrants who entered as children. Simply put, immigration is a hot tamale, and anyone who gets it wrong, proceeds at their own peril.

Traditionally, Democrats have been viewed as more pro-immigration than Republicans. But, in fact, both parties support immigration, but of two different types. Democrats have favored family-based immigration over employment-based immigration, in part because of traditional objections of trade unions but in reality because of the strong ethnic constituencies supporting Democrats in many areas of the United States. Republicans have historically favored expanding employment-based immigration, because a large part of their base owns hotels, restaurants, and other service businesses and agriculture that need a ready supply of labor. That, however, is where the over-simplification ends.
The last nationwide immigration amnesty was in 1986 under Republican President Ronald Reagan. The table below provides a brief overview of the major immigration reform legislation that has passed in the last 30 years:

<table>
<thead>
<tr>
<th>Year</th>
<th>Name of Bill</th>
<th>Brief Summary of Some of the Major Provisions</th>
</tr>
</thead>
</table>
| 1986 | Immigration Reform and Control Act of 1986 (Simpson-Mazzoli Act) | • provided amnesty to around 3 million immigrants—namely, certain seasonal agricultural immigrants and immigrants who entered the U.S. before January 1, 1982, and had resided there continuously since then  
  • to obtain amnesty, these immigrants had to admit guilt and pay a fine and any back taxes that were due  
  • employers were now required to attest to their employees’ immigration status, and it was made a crime to knowingly hire or recruit undocumented immigrants |
| 1990 | Immigration Act of 1990 | • increased limits on legal immigration from 500,000 new immigrants per year to 700,000 per year  
  • created the “diversity” visa program  
  • increased annual limits on permanent-job related visas and temporary work visas, and set up priority programs (EB-1 through EB-5) for certain immigrants such as professionals, those with advanced degrees, and those who invest in job-creating ventures  
  • allowed for the granting of temporary protected |
status to immigrants from countries where it would not be safe for them to return home

<table>
<thead>
<tr>
<th>Year</th>
<th>Act</th>
<th>Provisions</th>
</tr>
</thead>
</table>
| 1996   | Illegal Immigration Reform and Immigrant Responsibility Act of 1996 | • increased border security through measures such as hiring more border control agents and building more border fences  
• barred immigrants from applying for legal status for years if unlawfully present for more than 180 days  
• gave INS officers broad authority to bar entry to and deport immigrants without any judicial review |
| 2005   | REAL ID Act of 2005                           | • created federal standards for driver’s licenses and other forms of ID, making it more difficult for immigrants to obtain such documentation  
• allowed federal government to grant itself a waiver from laws impeding the building of border fences  
• allowed deportation for terrorist activity, including membership in designated terrorist organizations  
• made it more difficult to obtain political asylum |
| 2006   | Secure Fence Act of 2006                     | • increased border security through measures such as authorizing the building of 700 miles of border fences between the U.S. and Mexico |

In addition, there have been many other major proposals for immigration reform that have failed to pass. The most famous of these is the 2007 Comprehensive Immigration Reform Act, but other failed legislation includes bills such as the DREAM
Act (Development, Relief, and Education for Alien Minors), which was introduced in 2001, 2009, 2010, and 2011, but failed to obtain legislative approval from both chambers.

In 1986, when the Simpson-Mazzoli Act was passed, the country was “booming,” at least in comparison to today’s anemic economy. Around 3 million immigrants were “legalized.” There was broad bipartisan support for the legislation.

The current political landscape is quite different than under the Reagan-Bush White House and the Tip O’Neill Congress. The Tea Party Wing of the Republicans today is generally seen as a solid obstructionist wall blocking immigration reform. Led by a hard-line restrictionist right wing of the party, they are diametrically opposed to any amnesty deal or any form of immigrant legalization. They employ law-and-order rhetoric to opine that illegal immigrants are criminals and should not be rewarded for their illegality by being handed the precious “greencard.” Nor should illegals be entitled to “jump to the front of the line” over those who have chosen to apply legally for immigration and have waited years. They are consumed with the issue of border enforcement and take the position that until we “seal up” our borders, we shouldn’t even consider reforming the system. Democrats on the other hand “talk” immigration reform, but the reality is that during the first two years of President Obama’s initial term as President, when the Democrats controlled Congress, he was consumed with passage of Obamacare, and did not seem overly concerned with immigration reform for the remainder of his first term.

During 2009 and 2010, when Democrats controlled both chambers of Congress, but Republicans retained the ability to filibuster unwanted legislation, President Obama made very little attempt to persuade the couple of Republican Senators he needed to pass a bill to support immigration reform. It was only in the last days of his first term that President Obama executed an Executive Order staying the deportation of thousands of DREAM Act students who found themselves illegally in the US through “no fault of their own.” No doubt, politics and the attempt to solicit the support of the Hispanic community
were central to that decision. Indeed, given how crucial the Hispanic vote was to Obama’s reelection, this was arguably the most savvy political move Obama made in the lead-up to the 2012 election, where he garnered over 70 percent of the Hispanic vote, nationwide and in several key battleground states.¹

Then there are the individual interest groups and major players in the immigration landscape. Each of these groups supports immigration reform of one kind or another. Sometimes their interests align, and sometimes they are diametrically opposed. Certain issues, such as tighter border security, have broader-based support, while other issues create sharp dividing lines, particularly with regard to the most controversial issue of granting amnesty to undocumented immigrants living in the U.S.

On one side of the debate, there are pro-immigration groups that embrace increasing legal immigration of all kinds and granting amnesty to undocumented workers. A number of groups connected to the Hispanic community fall into this category. For instance, the National Council of La Raza, the nation’s largest national Hispanic civil rights and advocacy group, has long supported comprehensive immigration reform. Same for the League of United Latin American Citizens (LULAC). And although Hispanic groups have historically been the most vocal supporters of comprehensive immigration reform, other minority groups have pushed for reform efforts as well. For instance, the Asian American Justice Center has noted that around 10 percent of Asian Americans are undocumented, and has joined hands with other groups in support of comprehensive immigration reform, noting that “bring[ing] undocumented families out of the shadows” is one of their “top issues.”²

Another group that supports immigration reform is the National Immigration Forum, which has spent the last 30 years promoting pro-immigration national policies, including reform efforts to increase legal immigration and to grant amnesty (which they

refer to as a “pathway to citizenship”) to those immigrants who are already here. Also, while many other pro-immigration groups have remained silent on the issue of border control, or have aligned themselves with anti-immigration groups calling for stricter border controls such as increased fencing and patrolling, the National Immigration Forum has not shied away from speaking out in favor of a more “fiscally responsible and humane” approach to border control.³

The American Immigration Lawyers Association has also pushed for a comprehensive immigration reform bill.⁴ This group, which has 11,000 members with expertise in all aspects of immigration law and policy, supports increasing legal immigration both to reunite families (as Democrats have traditionally supported) and to provide our employers in the STEM fields with more qualified employees (as Republicans have traditionally supported).⁵ As for undocumented workers who currently live in the U.S., the American Immigration Lawyers Association explicitly disavows “amnesty”—knowing that this word is the bogey-man of the anti-immigration crowd—but then goes on to voice strong support for what it refers to as “earned legalization.”⁶ In other words, undocumented workers should be granted amnesty, but only after they “undergo a rigorous process” and pay “substantial penalties.”⁷

The immigration reform effort has many other allies that represent a diverse group of interests. For instance, some environmental groups have weighed in on immigration policy. Concerns over the environmental impacts of border walls, which can fragment populations of endangered species, has led the Sierra Club, the Defenders of Wildlife, and the Center for Biological Diversity to support an immigration policy that ensures the protection of “wildlife, communities, and natural resources from damage wrought by border walls between the U.S. and Mexico.”⁸

---

³ About the National Immigration Forum, http://immigrationforum.org/about.
⁵ Ibid. 4-5.
⁶ Ibid. 12-13.
⁷ Ibid.
And while most organized labor groups have historically opposed immigration reform, out of the (unfounded) fear that any increase in immigration would decrease the amount of jobs available to native-born workers, the Service Employees International Union has been a long-time supporter of immigration reform. This labor union, which has over two million members, around 25% of which are immigrants, endorses comprehensive immigration reform that includes an amnesty component to ensure a “realistic and expeditious mechanism” for undocumented workers to obtain citizenship.9

Comprehensive immigration reform also has substantial support from the business community. While traditional hard-line conservative groups like The Heritage Foundation and Talk Radio have consistently opposed any immigration reform that includes amnesty or another pathway to citizenship for undocumented workers, immigration reform has found support in what may seem like unlikely places. For instance, an immigration policy analyst for the libertarian Cato Institute recently spoke about the need to simultaneously grant amnesty to undocumented workers and pass immigration reform that includes “increasing legal immigration, and not just for highly skilled workers.”10 That same analyst also discussed the views of another conservative commentator who supports promising “amnesty right up front.”11

Another group that supports comprehensive immigration reform for business reasons is ImmigrationWorks USA, which organizes business owners to support reform efforts. This group advocates increasing worker visas so that U.S. employers have access to the labor force they need. It engages in educational and grassroots efforts to pressure Congress into passing comprehensive immigration reform. As one example, ImmigrationWorks USA has worked with farm and restaurant owners to make sure that they tell their congressional representatives about the need for comprehensive immigration reform.12

---

11 Ibid.
12 Stephen Dinan, Pro-immigration groups ready to fight, WASHINGTON TIMES, January 11, 2010.
The tech sector, led by Bill Gates, has also supported immigration reform, making a perennial call for additional H-1B numbers, and more quietly struggling to try to reform USCIS’s restrictive policies on L-1B Specialized Knowledge Workers, but to no real avail. There’s been little effort to coordinate business with the Hispanic community and other allies needed to push through a coalition comprehensive immigration reform effort. The result has been no amnesty, no reform. Hispanic groups appear to want amnesty or nothing. The tech sector is seemingly only concerned with its own need for highly skilled workers and a way to cut mounting compliance costs and enforcement risks. But the big picture comprehensive immigration reform approach is hard to put together in such a lousy economy plagued by high unemployment.

Even if all of the pro-immigration groups were better organized and could band together to push for reform, they would have to contend against a large number of anti-immigration organizations such as the Federation for American Immigration Reform (FAIR) and NumbersUSA. These groups, along with others like them, actively push for caps and cuts in immigration. FAIR and NumbersUSA work with Talk Radio and internet groups to effectively block any reform legislation by drumming up nativist fears and conspiracy theories with a stock cast of Mexican gunrunners, illegal immigrants bankrupting the nation’s welfare programs, and human waves of Indian computer programmers clamoring ashore to take “American jobs.” For instance, when the Comprehensive Immigration Reform Act of 2007 was proposed, the website of a group called The American Voice Institute of Public Policy encouraged people to contact Senators and voice their opposition to the bill that this group claimed would “plunge America into a third world nation.”

These groups are not shy about touting the impact they have had on national immigration policy. For instance, NumbersUSA claims on its website that the Comprehensive Immigration Reform Act of 2007 “failed mostly because to the efforts of

---

NumbersUSA’s activists faxing and phone call campaigns to the senators’ offices.”\(^\text{14}\) As the *New York Times* noted in an editorial at the end of May 2007, proponents of comprehensive immigration reform found themselves “overmatched by the ferocity of the opposition from the restrictionist right, with talk radio lighting up over ‘amnesty,’ callers spitting out the words with all the hate they can pour into it.”\(^\text{15}\)

Other groups like The Heritage Foundation, a conservative think tank, have actively opposed comprehensive immigration reform. The Heritage Foundation was quick to characterize the Comprehensive Immigration Reform Act of 2007 as “the amnesty bill,” and later issued a statement celebrating the defeat of that bill: “In rejecting amnesty for illegal immigrants, today’s Senate vote was a victory for those who believe in the rule of law.”\(^\text{16}\) Similar statements were made by some of the Republican Senators who led the charge to defeat the Comprehensive Immigration Reform Act of 2007, including Jim DeMint, who claimed that “the American people won today” by refusing to pass immigration reform.\(^\text{17}\) Interestingly, Jim DeMint—often described as an “immigration hawk”—recently left the Senate to become President of The Heritage Foundation, ensuring that this conservative think tank will continue to oppose any effort at comprehensive immigration reform.

The role of Talk Radio on the immigration debate also cannot be underestimated. One Senator who opposed the Comprehensive Immigration Reform Act of 2007 stated that Talk Radio was “a big factor” in the defeat of that law.\(^\text{18}\) A study that was released shortly after the defeat of the Comprehensive Immigration Reform Act of 2007 confirmed that Talk Radio helped ensure the bill’s demise by convincing people that the proposed legislation was primarily an amnesty bill.\(^\text{19}\)

\(^{18}\) Ibid.
The Comprehensive Immigration Reform Act of 2007

Just a few months after becoming the 43rd President of the United States, George W. Bush went to Ellis Island and announced that immigration reform was a major priority of his new administration:

Immigration is not a problem to be solved. It is a sign of a confident and successful nation. And people who seek to make America their home should not be met in that spirit by representatives of our government. New arrivals should be greeted not with suspicion and resentment, but with openness and courtesy. As many immigrants can testify, that standard has not always been observed. For those seeking entry, the process is often a prolonged ordeal full of complexities and burdens. I'm committed to changing this with INS reforms that treat every immigrant with respect and fairness.\(^\text{20}\)

The closest we came to comprehensive immigration reform in recent decades was in 2007 under President Bush, a staunch supporter of the legislation. Originally crafted and introduced as bipartisan legislation from Senators McCain and Kennedy, it took years for the 761-page bill to reach a vote in 2007. In April 2007, most pundits and President Bush expressed optimism about the bill’s chances for passage. The next month, when the bill was formally introduced, it became clear that there would be speed bumps, but the bill still seemed to be on track.

All was going well, or so it seemed, until five last-minute amendments were introduced mostly by Republicans but some by Democrats. Two of these so-called “bill-killing” amendments would have weakened the “guest worker” provisions of the bill, by sunsetting the program after five years. Two of the other so-called “bill-killing” amendments provided for granting temporary work status to immigrants waiting for amnesty. The other would have made it easier for such people to get work by requiring that they leave the U.S. first. Texas Senator Kay Bailey Hutchinson opposed the bill which provided a path to legalization for undocumented immigrants. It would have required family members to exit the U.S., return to their native countries and apply at a U.S. Embassy abroad for the immigrant visa. There was general agreement on this

\(^{20}\) Remarks by the President at an INS Naturalization Ceremony, July 7, 2001
provision until at the last moment Hutchinson introduced an amendment requiring that head of households also exit the country and return home, in addition to remaining family members. While this amendment was eventually defeated, this along with other bill-killing amendments crafted largely by Republicans, effectively ended any chance of passage.

In the end, although the bill had been carefully crafted to appeal to both parties, around a third of Senate Democrats joined over three-fourths of Senate Republicans to kill the bill.\(^{21}\) With 53 Senators against moving on to a final vote and only 46 in favor, supporters fell dramatically short of the 60 votes needed to overcome the delaying tactics (cloture) and parliamentary maneuvers that had dogged the bill for weeks.\(^{22}\) With no way to cut off debate, Senate Majority Leader Harry M. Reid (D-Nev.) pulled the bill from the Senate floor for a second time.\(^{23}\)

The rancor that was evident in the defeat of the 2007 bill is understandable given the fact that most Americans opposed immigration reform by almost 70 percent. Senator Jeff Sessions (R-Ala) described the bill’s failure as “a crushing defeat, [e]xceeding my expectations.”\(^{24}\) Senate Majority Leader Harry Reid (D-Nev) declared, “the big winner today was obstruction.”\(^{25}\) Mexican President Felipe Calderon said the Senate had made a “great mistake” in rejecting the bill. “The U.S. economy cannot keep going without migrant labor,” he said.\(^{26}\)

**Did Senator Obama kill the McCain Immigration Reform Bill?**

Barack Obama, then Senator Obama, had long been on record as a supporter of comprehensive immigration reform. Much, however, has been written about Obama’s

\(^{22}\) *Ibid.*
\(^{23}\) Nicole Gaouette, Senate buries immigration bill, LOS ANGELES TIMES, June 29, 2007.
\(^{26}\) *Ibid.*
last-minute support of the five “killer” amendments that were largely seen as the unraveling of the immigration bill. So what actually happened?

Obama voted for the five “killer” amendments. Two of those amendments would have weakened the “guest worker” provisions of the bill, by sunsetting the program after five years and lowering the annual quota for the first five years. Two of the other amendments Obama voted for would have made it easier for amnesty applicants to gain temporary worker authorization during the process. The other amendment would have made it easier for such people to get work visas by eliminating the requirement that they had to leave the U.S. first.²⁷

The theory that Obama was responsible for the death of the Comprehensive Immigration Reform Act of 2007 rests on the fact that he provided the tie-breaking vote in favor of the amendment to require the “guest worker” provisions to sunset altogether after five years. According to some, this 49-48 vote “was essentially a deal breaker for most Republicans”: “[O]nce the guest worker provision had been set to sunset most Republicans were unwilling to support the bill with a yes vote.”²⁸ One thing that this amendment did was cement the view that the bill was no longer bipartisan—a view that was also fueled by reports that the passage of this amendment was driven by the lobbying efforts of organized labor, which was playing a much bigger role in 2007 than it did the year before. It was well known that organized labor was intent on altering the “guest worker” provisions so that employers would have to pay higher wages, thereby making those jobs more attractive to native-born Americans.²⁹

One problem with this argument is that the “guest worker” program was never all that popular to begin with. Indeed, it was one of the reasons that some long-time proponents of immigration reform had opposed this bill right from the start. For instance,

just after the Senate introduced the bill, LULAC voted unanimously to oppose the bill.\textsuperscript{30} LULAC noted that the “guest worker” program “alone would create a new underclass of easily exploited workers who would be forbidden from realizing the American Dream.”\textsuperscript{31} And many opponents of immigration reform also opposed the “guest worker” program because they considered it to be a pseudo-amnesty. Thus, the decision to sunset an already unpopular “guest worker” program cannot have been what killed immigration reform.

Nevertheless, Republicans accused Obama of “stabbing them in the back” by voting for the “killer” amendments after having been “taken in” to the McCain inner sanctum of immigration reform. Democrats deny this, saying that Obama believed that the amendments would help gain passage of the bill and that McCain, although he still supported the bill, had waned in his enthusiasm for the immigration bill as he saw that his strong support was detrimental to his Presidential election chances because it would be used against him in the Republican primary.

So what really was the most plausible reason the bill failed? My conclusion is that amnesty killed the bill. A significant core of hard-line Republicans opposed even the thought of amnesty, and middle-of-the-road Republicans failed to win over their hard-line colleagues. One commentator even described the watershed event that killed the bill as “opposition to amnesty—an avalanche of right wing anti-Mexican racism.”\textsuperscript{32}

Major immigration reform is incredibly difficult to achieve. A large core group of the Republican party is opposed to amnesty. And because of politics one can understand their reluctance to support amnesty. After all, with approximately 70% of the Hispanic vote going for the Democrats, why would the Republicans be interested in legalizing 12 million undocumented immigrants, most of whom will wind up voting for


\textsuperscript{31} Ibid.

\textsuperscript{32} Algase, Ibid.
Democrats? Republicans would, in effect, be voting themselves out of office permanently!

Indeed, that is precisely the argument that was put forward by Rush Limbaugh in his staunch opposition to the Comprehensive Immigration Reform Act of 2007, which he referred to as the “Destroy the Republican Party Act.” According to Limbaugh, immigration reform was nothing more than a thinly veiled attempt by Democrats to create “a brand-new electorate” of the voting-age portion of the 12 million undocumented immigrants to help Democrats “win election after election after election.”

The only immigration policy that practically all Republicans have consistently supported is increased border protections. Indeed, another explanation for why the 2007 immigration reform bill failed is that the delicate coalition of supporters for comprehensive immigration reform began to fall apart a year earlier when Congress passed the Secure Fence Act of 2006. This Republican-driven bill, which called for building 700 miles of new fencing at the U.S.-Mexico border, passed with overwhelming support in both chambers. Roughly a third of the Democrats in the House and Senate voted in favor of this bill, and over 97% of Republicans in both chambers supported the bill.

President Bush signed the Secure Fence Act of 2006 out of “party loyalty,” even though he had been actively lobbying Republican Senators and Representatives to pass comprehensive immigration reform, rather than piecemeal bills like this one. President Bush knew that a piecemeal approach to immigration reform was problematic because border protection was the only immigration concern for a number of hard-line Republicans, who viewed undocumented immigrants as a threat to national security and were not interested in hearing about the benefits of immigration. Of course, some of

those hard-liners were probably never going to support comprehensive immigration reform anyways, but some of them may have been willing to back such a proposal if it were the only way to achieve increased border security. But once they got the bill they wanted, they no longer had any interest in taking part in comprehensive immigration reform.

And the Secure Fence Act of 2006 also pulled the rug out from more moderate Republicans who, like the hard-liners, used national security as a justification for their support for comprehensive immigration reform. Before the Secure Fence Act of 2006, these moderate Republicans could tell their anti-immigration constituents that a bill allowing amnesty was a necessary evil to help ensure greater border security. But once border security went through as a stand-alone measure, comprehensive immigration reform started to look a lot more like simply amnesty, not national security. A pure amnesty bill would garner few, if any, Republican votes, and would have enough defectors from the Democrats to prevent passage. Suddenly the delicate coalition was starting to break apart.

Recognizing that a bill would never pass if it were focused only on amnesty, the Comprehensive Immigration Reform Act of 2007 proposed numerous provisions for beefing up border security beyond what was required by the Secure Fence Act of 2006. Still, the case for an immigration bill to secure our borders became a much harder sell once Congress had already passed a bill that specifically aimed at securing our borders. In short, because a secure borders act had already passed the year before, the Comprehensive Immigration Reform Act of 2007 was generally seen primarily as an amnesty bill.

The history of the Comprehensive Immigration Reform Act of 2007 made clear that this is an issue where neither party could count on a united front. Comprehensive immigration reform encompasses so many different—and often conflicting—goals that there is simply no way to bring together all of the divergent views within each party. Indeed, the closest either party has come to a unified front was the Secure Fence Act of
2006, which had virtually universal support among Republicans. But that was only possible because that bill was the polar opposite of comprehensive reform—rather than addressing immigration reform at all levels, it singled out one issue (border security) and ignored everything else.

The difficulty of presenting a unified front within each party is why the 2007 effort at comprehensive immigration reform lived and died in the Senate and was never addressed by the House. When Representative Nancy Pelosi took over as Speaker of the House in January 2007, after the Democrats took majority control of that chamber following the 2006 election, she focused all of her efforts on “issues that could easily garner majority support” and deliberately avoided addressing immigration because she “feared splitting and subsequently losing control of her recent majority, understanding that some Democrats would be forced to break from leadership when voting on immigration.”

Without any help from the House leadership, comprehensive immigration reform was left to the Senate.

The Senate should have been safe ground for the passage of comprehensive immigration reform. After all, the Senate had already passed such a bill the previous session, by a vote of 62 to 36. That bill ended up dying in a conference committee during the summer of 2006, presumably because it contained numerous measures—including an amnesty-like pathway to citizenship—that the House version had rejected. But re-passage in the Senate should have been a cakewalk. After all, the 62 votes for comprehensive immigration reform in 2006 included the support of over 85% of Democratic Senators, and the 2006 election saw the addition of a number of new Democratic Senators as that party took control of the Senate. Thus, if anything, there should have been more votes in favor of comprehensive immigration reform in 2007 than there were in 2006.

But it did not pan out that way. As some commentators have noted, the bill ran into trouble right off the bat:

37 Ibid. 162.
Since its introduction, various components of the Senate proposal have come under fire from all sides of the debate. Conservative groups said Republican senators who supported the proposal were “caving” on conservative principles of strongly enforcing the border and following the rule of law. Conservatives also opposed the legalization program, which many equated to an amnesty.

On the left, some criticized the merit-based system, claiming it would divide families and mark a drastic change to US immigration policy.

Labor advocates opposed the temporary guest worker program, which they said would create an underclass of workers and bring down the wages of native workers.

Immigrant advocacy groups said that the application fee for the Z visa, which could cost up to $9,000 for a family of four, was too high and the “touchback” provision too burdensome. Further, they said the bill placed too many overall restrictions on immigrants seeking a path to legalization/citizenship.

Employers were also unhappy with the legislation, claiming it would not cure the severe labor shortages they foresee in the coming decade. Employers of high-skilled workers said the merit-based points system would “take the hiring decision out of [employers’] hands and place it in the hands of the federal government.” Employers of low-skilled workers claimed that a merit-based system would be skewed in favor of more highly skilled and educated workers, resulting in labor shortages in certain industries.\(^{38}\)

In short, in attempting to put together a coalition of supporters, the proponents of the Comprehensive Immigration Reform Act of 2007 ended up simultaneously creating a coalition of opponents who, while perhaps supportive of some provisions of the bill, were unwilling to tolerate those provisions that they disfavored.

The bill eventually failed by a vote of 46 to 53 to obtain the cloture vote that was needed for passage. How did Comprehensive Immigration Reform go from having 62 votes in the Senate in 2006 to just 46 votes one year later? The answer is that Republican support for the bill dropped precipitously. While the 2006 bill had the support of 22 Republicans, a year later there were only 11 Republicans who voted in favor of

---

cloture on the 2007 bill.\textsuperscript{39} This sharp decline can only be explained by a ramping up of the anti-amnesty rhetoric among hard-line Republicans, who were able to bring more moderate Republicans into their camp after passage of the Secure Fence Act of 2006. Once the issue of border security had been cleaved off, the bill started to look less like a bipartisan effort and more like a bill that was being driven only by Democrats.

The amnesty provisions of the Comprehensive Immigration Reform Act of 2007 led some prominent hard-line Republican Senators to deem the bill “dead on arrival” before it was even formally introduced.\textsuperscript{40} Although the bill never made it through the Senate, even if it had, a number of hard-line Republican House members were on record taking a similar stance and noting that there was “overwhelming opposition in the U.S. House to the Senate immigration bill.”\textsuperscript{41}

In the end, it was not Obama that killed the Comprehensive Immigration Reform Act of 2007. It was amnesty.

\textbf{Current Efforts at Comprehensive Immigration Reform}

The long, tortured history of failed attempts at comprehensive immigration reform took an interesting twist after the 2012 presidential election. The day after President Obama won reelection, the Hispanic community, over 70\% of which voted for Obama, took credit for his victory and began making policy demands.\textsuperscript{42} The Hispanic vote was suddenly the most important demographic in U.S. electoral politics, and Democrats began shifting even more toward pro-immigration policies, while a number of prominent previously anti-immigration Republicans did an abrupt U-turn and began touting the need for comprehensive immigration reform.

\textsuperscript{42} Candace Wheeler, \textit{Advocates hope high Latino voter turnout will lead to immigration policy changes,} WASHINGTON POST, November 8, 2012.
House Speaker John Boehner (R-Oh), for instance, who for years refused to address immigration reform in any way and elevated Republicans with well-known anti-immigration slants into positions of power, surprised many when—just days after the election—he claimed that comprehensive immigration reform is necessary and vowed to work toward achieving it. Other former hard-line anti-immigration Republicans, such as Sean Hannity and Rupert Murdoch, also did an abrupt about-face and began calling for comprehensive immigration reform in the week after the election. Similarly, conservative columnist George Will noted that 2012 is the “year in which election results reinserted immigration into the political conversation” and went on to stake out his position that immigration should be seen as “an entrepreneurial act.” In the words of veteran Republican Party strategist Charlie Black, “What you have is agreement that we as a party need to spend a lot of time and effort on the Latino vote.” In perhaps the clearest indication that the Republican Party was serious about building bridges with the Hispanic community, former President George W. Bush—who has generally been seen as political kryptonite since he left office four years ago, and was not even invited to speak at this year’s Republican National Convention—made a public appearance in early December 2012 to tout the benefits of immigration and the need for immigration reform.

The Republican Party’s recent outreach to the Hispanic community is simply a matter of political survival. Some commentators have noted that the results of the 2012 election show that the Republican Party faces a “demographic cliff” as it sees ever smaller support each election cycle from a Hispanic population that makes up an ever

44 George Will, America Needs Immigrants as Much as Ever, WASHINGTON POST, December 26, 2012.
larger share of the electorate.\textsuperscript{47} According to this theory, Republicans “have alienated Latino voters so thoroughly that they risk becoming a regional party unless something big changes, and changes soon.”\textsuperscript{48} In short, from an electoral-strategy perspective, Republicans’ anti-immigration policies have been “a colossal failure.”\textsuperscript{49} By contrast, President Obama’s decision in the summer of 2012 to provide relief from deportation for roughly 1.4 million undocumented workers under age 30 arguably “changed the course of the election” in Obama’s favor by increasing enthusiasm for him among Latino and non-Latino supporters of immigrant rights.\textsuperscript{50}

The Republican party’s current unpopularity among Hispanic voters is viewed as a “demographic cliff” because Hispanic voters have had an increasingly large influence on the last few elections, and will have an even larger impact in the years to come. In a recent study by the Pew Research Center, titled “An Awakened Giant: The Hispanic Electorate Is Likely to Double by 2030,” the authors note that the roughly 12 million Hispanics who turned out to vote in 2012 are only a fraction of the 53 million Hispanics that currently reside in the U.S., many of whom (including 17 million Hispanics currently under age 18) will become voters in future elections.\textsuperscript{51} The study thus predicts that “generational replacement alone” will change the current number of eligible Hispanic voters from around 23 million “to about 40 million within two decades.”\textsuperscript{52} Thus, if electoral turnout “over time converges with that of whites and blacks in recent elections (66\% and 65\%, respectively, in 2008), that would mean twice as many Latino voters could be casting ballots in 2032 as did in 2012.”\textsuperscript{53} And keep in mind that these numbers refer only to Hispanics who are currently U.S. citizens—the doubling of Hispanic voters does not include any of the roughly 12 million undocumented workers (over 7 million of

\begin{flushleft}
\textsuperscript{48}\textit{Ibid.}
\textsuperscript{49}\textit{Ibid.}
\textsuperscript{50}\textit{Ibid.}
\textsuperscript{52}\textit{Ibid.}
\textsuperscript{53}\textit{Ibid.}
\end{flushleft}
which are already of voting age) who would become eligible for citizenship (and voting rights) if Congress passed comprehensive immigration reform that included an amnesty provision.\textsuperscript{54}

Thus, it is not surprising that Republicans are scrambling to find a way to gain traction among this growing demographic. Although some Republicans remain steadfast in their hard-line opposition to immigration reform of any kind, particularly if it includes an amnesty provision, there seems to be a shift occurring among the more moderate members of that party. For instance, a recent article by the conservative pundit and Tea Party gem Ann Coulter led to a harsh backlash from a pro-immigrant faction of the Republican Party, which demanded “an immediate apology for [her] latest anti-Latino and anti-immigrant rant.”\textsuperscript{55} And pro-immigration groups like the National Immigration Forum are suddenly finding new allies among Republicans, as demonstrated by a December 2012 gathering of traditionally conservative business owners, law enforcement officials, and evangelicals.\textsuperscript{56}

While the movement of former hard-line anti-immigrant Republicans has garnered the most media attention in the weeks after the election, it is also noteworthy that Democrats have shifted positions as well, albeit in a more subtle way. President Obama, for instance, is much more outspoken about the need for comprehensive immigration reform, and made a policy statement at the end of November 2012 explicitly calling for amnesty through “establishing a pathway for undocumented individuals to earn their citizenship.”\textsuperscript{57}

\textsuperscript{54} Ibid. 7. \\
The pressure is mounting, and supporters of comprehensive immigration reform are seizing the moment. A coalition of eight Latino groups informed legislators in early December 2012 that these groups intend to put together scorecards keeping track of each legislator’s voting record on immigration reform efforts, and they “promised to widely publicize the scores within the Latino community next time those lawmakers are up for reelection.”\(^{58}\) The coalition noted that it intends to target members of both major parties, and warned that for politicians who fail to support comprehensive immigration reform, the 2014 elections “may not look too pretty.”\(^{59}\)

That said, those skeptical of the prospects of comprehensive immigration reform note that by the end of December 2012, economic issues related to the impending “fiscal cliff” were already pushing immigration reform issues to the back-burner.\(^{60}\) After all, while President George W. Bush was a staunch proponent of comprehensive immigration reform, the sad truth remains that “comprehensive immigration reform was nonexistent under eight years of Bush.”\(^{61}\) Also, there could be a backlash to the zeal with which some Hispanic groups began pushing comprehensive immigration reform in the immediate aftermath of the 2012 election. After all, bipartisanship is needed if a bill is going be embraced by both a Republican-led House and a Democratic-let Senate. Yet, the coalition of eight Latino groups that called for comprehensive immigration reform in early December 2012 did not strike the tone that one would be expect when looking to pass bipartisanship legislation. Not mincing words, one leader of that group told the press that there would be a “massive” grassroots campaign to ensure that Hispanics are informed of (and thus able to vote out of office) anyone who opposes reform efforts: “Comprehensive immigration reform is going to happen. Whether it will


\(^{59}\) Ibid.


\(^{61}\) Ibid.
be over the political bodies of some of the current members of Congress only they can decide."\(^62\)

While a number of Republicans are now making noise about supporting comprehensive immigration reform, it is unclear how deep that support goes. Republicans are in a bit of a quandary when it comes to immigration reform. In short, “Republican leaders who have studied voting statistics are concerned that their party’s chances to regain the White House will dwindle if they cannot attract more Latinos.”\(^63\) They simply cannot survive future elections if the ever-expanding demographic of Hispanic voters continues to give 70% of its support to Democrats. But the solution to this problem is not clear. If Republicans thought they could flip that number and get Hispanics to vote 70% in favor of Republicans, then they would almost surely support comprehensive immigration reform. But the quandary for Republicans arises from the fact that it is unclear whether a majority of Hispanics will ever support the Republican Party. The best data to date shows that even George W. Bush, who was a staunch proponent of comprehensive immigration reform and received higher approval ratings among Hispanics than any other Republican President, received only around 40% of the Hispanic vote in 2004.\(^64\) Similarly, Ronald Reagan, who believed that “Hispanics are already Republican—they just don’t know it yet,” hired an advertising guru to help him court Hispanic voters in 1984, but still received only around 40% of the Hispanic vote that year.\(^65\) If at least 6 out of 10 Hispanics are going to vote Democratic even when Republicans reach out to them and take policy positions in support of comprehensive immigration reform, then the most sensible Republican strategy would be to do all they can to prevent legislation that would allow 12 million undocumented immigrants to obtain citizenship and the voting rights that accompany it.


\(^63\) Ibid.


Even better, from a purely strategic standpoint, would be for Republicans to privately oppose immigration reform and use underhanded techniques to keep an amnesty-type bill from passing (thus minimizing the amount of Hispanics eligible to vote), while publicly claiming to support immigration reform (to try to move Hispanic support for Republicans from the less than 30% received by Romney in 2012 to the Bush-era numbers of around 40% in 2004). In December 2012, Republicans, led by Latino Senator Marco Rubio, began hinting at one way they might try to do precisely that—namely, by pushing pro-immigration bills in a piecemeal fashion and addressing immigration issues that have broad-based support “before ever considering granting legal status” to undocumented workers. This approach allows Republicans to appear to be pro-immigration because they are advocating, for instance, an increase in high-tech and other STEM-related visas, while avoiding comprehensive immigration reform that would create a new segment of Democrat-leaning voters. Their hope is that Hispanic voters will view Republicans’ support for these piecemeal bills as outweighing the failure to support comprehensive reform efforts that include amnesty.

That may be too fine a line to walk, particularly now that various pro-immigration groups are paying close attention to which legislators support their agenda. But that may be the best option Republicans have if the party seeks to remain viable in future elections. This is particularly true given that President Obama is so wildly popular with Hispanics, and, despite increasing deportations and failing to achieve comprehensive immigration reform in his first four years of office, is generally seen as pro-immigration. By contrast, the Republican Party, led by Mitt Romney’s calls for “self-deportation,” was seen by the end of the 2012 election as the party that opposes immigration. This means that, going forward, even if Republicans were willing to jump up and down shouting their support for immigration, at the end of the day President Obama and his Democratic Party are likely to gain as much, if not more, credit for the passage of comprehensive immigration reform. That result would be the absolute worst outcome for the Republican

---

Party, which would not only see a rise in the Hispanic voting population, but would also see Democrats maintaining, or perhaps even increasing, their 70% share of that vote.

Game theorists would describe the situation for Republicans using the following table of possibilities:

<table>
<thead>
<tr>
<th>Should Republicans Support an Amnesty Bill?</th>
<th>If the Bill Passes and Both Parties Get Credit</th>
<th>If the Bill Passes and Only Democrats Get Credit</th>
<th>If the Bill Fails</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>(OPTION 1)</td>
<td>(OPTION 2)</td>
<td>(OPTION 3)</td>
</tr>
<tr>
<td></td>
<td>Republican portion of 12 million current</td>
<td>Republicans get 30% of 12 million current</td>
<td>Republican portion of 12 million current</td>
</tr>
<tr>
<td></td>
<td>Hispanic voters increases to 40% (netting</td>
<td>Hispanic voters (no net votes to anyone).</td>
<td>Hispanic voters increases to 40% (netting</td>
</tr>
<tr>
<td></td>
<td>Republicans 1.2 million votes)</td>
<td></td>
<td>Republicans 1.2</td>
</tr>
<tr>
<td></td>
<td>12 million new voters, 7 million immediately</td>
<td>12 million new voters, 7 million immediately</td>
<td>No new Hispanic</td>
</tr>
<tr>
<td></td>
<td>eligible to vote → 4 million voting, 60% for</td>
<td>eligible to vote → 4 million voting, 70% for</td>
<td>voters obtaining</td>
</tr>
<tr>
<td></td>
<td>Democrats (netting Democrats 0.8 million votes)</td>
<td>Democrats (netting Democrats 1.6 million votes)</td>
<td>citizenship through</td>
</tr>
<tr>
<td></td>
<td>Net effect = 0.4 million additional votes for</td>
<td>Net effect = 1.6 million additional votes for</td>
<td>amnesty (no net</td>
</tr>
<tr>
<td></td>
<td>Republicans (increases as Hispanic turnout</td>
<td>Democrats (increases as Hispanic turnout</td>
<td>votes to anyone)</td>
</tr>
<tr>
<td></td>
<td>increases)</td>
<td>increases)</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
No

X
(not possible—if Republicans oppose reform, they will not get credit for it)

(OPTION 4)
Same as above.
Net effect = 1.6 million additional votes for Democrats (increases as Hispanic turnout increases)

(OPTION 5)
Republicans get 30% of 12 million current Hispanic voters (no net votes to anyone).
Net effect = neither party gains or loses votes

Of course, this is an overly simplistic model. For one thing, it is focused primarily on the immediate elections of 2014 and 2016 and assumes that Hispanic turnout would be similar in those elections as in 2012. But, as noted above, if Hispanic turnout increases sharply, as it is expected to do in the next 20 years, then the winners in the above columns become even greater winners on the whole. Thus, as a long-term strategy, the potential pay-off to Republicans for supporting immigration reform increases immensely if it can somehow end up with Options 1 or 3 (supporting comprehensive immigration reform and either getting joint credit for the bill’s passage or seeing the bill fail despite Republican support). With an ever-increasing Hispanic population, if the Republican party can move from receiving 30% support to 40%, that extra 10% would translate to a lot of additional Republican votes, and would more than offset the immediate net loss of around 0.8 million votes from receiving only 40% of the roughly 4 million voters who show up immediately after an amnesty bill is passed. It would even more than offset the greater loss of votes once all 12 million undocumented workers come of voting age, which could make the net vote loss to Republicans from amnesty more like 1.5 million, rather than 0.8 million.

The problem is that not all of the 5 options noted in the table above are equally likely. To the contrary, the best option for Republicans—option 3—is practically impossible. As noted earlier, Republicans seemed to be taking a stab at this outcome in

the months after the election when they proposed piecemeal immigration bills that are facially pro-immigration, while at the same time avoiding any amnesty-type provisions. But at some point Democrats are sure to make Republicans take a firm stance on the specific issue of comprehensive immigration reform that includes amnesty. If Republicans come out in favor of comprehensive immigration reform, it is very unlikely that an amnesty provision would fail to pass, given that the vast majority of Democrats and the President support amnesty. The only way that could happen is if Republicans claimed to support the bill, while finding a procedural or technical reason to block its passage (such as claiming that the issue is better dealt with piecemeal). But any scrutiny of such efforts would surely result in Republicans being blamed for the failure to pass comprehensive immigration. In that situation, it is difficult to see how Republicans would gain support among Hispanics voters.

Option 1 is more likely, but even that is probably wishful thinking. As noted in the table above, if comprehensive immigration reform passes, there are three possibilities: option 1, in which Republicans see small, but increasing, gains in votes, or option 2 or 4, which both lead to significantly larger—and increasing—gains for Democrats. And not only are the potential gains to the Democrats larger that the potential gains to the Republicans, but the likelihood of option 1 is pretty minimal relative to the likelihood of option 2 or 4. As noted above, correctly or incorrectly, the 2012 election solidified the view that President Obama and his fellow Democrats are more pro-immigration than Republicans, and Democrats are thus quite likely to take the vast majority of the credit for the passage of comprehensive immigration reform. Consequently, Republicans would be deluding themselves if they thought that the passage of comprehensive immigration reform would result in them receiving increased support from Hispanics in future elections.

If my analysis is correct that Democrats will likely get most of the credit for the passage of comprehensive immigration reform, then option 1, like option 3, is a very unlikely outcome. In football terms, options 1 and 3 might be considered Hail Marys. That leaves options 2, 4, and 5 as the only real options the Republicans have. And
options 2 and 4, which both result in significantly increased voter support for Democrats, are clearly disastrous for the Republican parties’ future electoral prospects. Thus, the only real choice that the Republicans have to prevent further losses to Democrats in future elections is option 5, in which they oppose comprehensive immigration reform and succeed in defeating such a bill from passing. From an electoral strategy perspective, that seems to be the best choice of the realistic options facing the Republican Party.

That said, Republicans cannot be happy about maintaining the status quo in which they oppose comprehensive immigration reform and consequently continue to receive only 30% of the Hispanic vote. Given the ever-increasing numbers of Hispanic voters, particularly in a number of key battleground states, this really could mean the end of that party.\textsuperscript{68} If the situation really is that desperate, then Hail Marys may be what is needed, and Republicans may end up supporting comprehensive immigration reform in the hope that they will receive credit for it.

Any way you look at it, comprehensive immigration reform depends on a coalition of legislators overcoming many obstacles that have prevented such legislation in years past.

\textsuperscript{68} Tramonte, \textit{Ibid}. 