

SUMMARY & ANALYSIS

The President's Plan for Immigration Reform

Based on a fact sheet released January 29, 2013

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On January 29, President Barack Obama outlined his vision for a new immigration system in an inspirational and visionary speech delivered in Las Vegas and a subsequently issued fact sheet.¹ Similar to the bipartisan Senate framework unveiled the day before,² the president's plan contains four key principles that highlight his priorities for immigration reform.

THE PRESIDENT'S PLAN

1. A roadmap to citizenship

Provisional legal status: requirements and conditions

- All unauthorized immigrants would have to register with the government, submit biometric data, be subject to a background and national security check, and pay fees and penalties. There would be no requirement to demonstrate prior or continuous employment in the U.S. Individuals with this status would be allowed to work lawfully in the U.S. immediately after meeting these requirements.
- Immigrants with this status would not be eligible for federal public benefits such as Medicaid or SNAP (the Supplemental Nutrition Assistance Program) until after receiving their lawful permanent residency.
- People in this status would be prohibited from receiving subsidies or tax credits under the Affordable Care Act (ACA), thereby preventing them from having access to affordable health care.
- A person whose provisional legal status was denied or revoked would have the opportunity to appeal such a decision. Those in provisional status whose application to adjust their status to lawful permanent residence was denied would have the same rights of appeal.

¹ www.whitehouse.gov/the-press-office/2013/01/29/fact-sheet-fixing-our-broken-immigration-system-so-everyone-plays-rules.

² <http://s3.documentcloud.org/documents/562512/final-bipartisan-framework-for-immigration-reform.pdf>.

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- Applicants would be subject to increased scrutiny for fraud. The president's plan calls for increased funding for federal agencies to conduct audits and training for fraud detection.

Conditions for moving from provisional status to lawful permanent resident status

- Once existing immigration visa backlogs are cleared, people with provisional status would be able to apply for lawful permanent residence (a "green card"). They would have to pay taxes, pass additional criminal and national security background checks, pay additional fees and penalties, learn English and U.S. civics, and register for the Selective Service (if applicable). They would be eligible to apply for U.S. citizenship after five years of lawful permanent residence.

DREAMers: Expedited road to citizenship

- Individuals who were brought to the U.S. as children (also known as "DREAMers") would have an expedited road to citizenship. They would be eligible to obtain a green card and U.S. citizenship sooner if they attend college or serve in the U.S. armed forces for two years.

2. Increased detention, deportation, and border control measures

The president's plan calls for taking the following steps in the area of border and internal immigration enforcement:

Border control

- Improve infrastructure at ports of entry.
- Continue to support the use of technology to control land and maritime borders.
- Engage in partnerships with private companies to increase investment in foreign visitor processing.
- Increase funding to tribal governments to reduce illegal activity on tribal borderlands.
- Establishment by the U.S. Department of Homeland Security (DHS) of border community liaisons on the northern and southern borders to improve communication and cooperation.
- Strengthen training on civil rights and civil liberties for DHS officers.

Increased and new criminal penalties

- Target transnational criminal organizations that engage in drug, weapons, and currency trafficking and human smuggling.
- Expand the scope of forfeiture of organizations' criminal tools and proceeds.
- Create additional criminal penalties for dealing in fraudulent passports and immigration documents.
- Increase criminal penalties for fraud, including *notario* fraud.

- Target for deportation those who have been convicted of an offense and are in federal or state prisons and jails. (The plan does not propose details about what kinds of criminal convictions would lead to deportation. However, it appears to call for additional “protections” for individuals with asylum claims.)
- Create a new, streamlined administrative removal process for visa-overstayers who have been determined to be national security or public safety threats. (The plan is unclear about whether this new process would include the possibility of appealing a removal order.)

Investment in immigration courts

- The plan calls for a much-needed increase in the number of immigration judges and staff, including training for court personnel.
- The plan proposes greater protections for those least able to represent themselves and increased resources to improve access to legal information for all immigrants in court proceedings.

Detention

- The plan calls for expansion of alternatives to detention and reduction of overall detention costs.

3. Workplace enforcement

The president’s plan calls for taking the following steps in the area of attempting to ensure that U.S. employers hire only workers eligible to be employed in the U.S.:

Electronic employment eligibility verification mandate

- Mandate that all employers use an electronic employment eligibility verification system to verify the employment eligibility of all new hires, to be phased in over five years. Some exemptions would apply to small businesses.
- Significantly increase penalties for hiring unauthorized workers, particularly for employers who hire unauthorized workers in order to avoid having to comply with workplace standards.
- Ensure that workers’ personal information is kept private and confidential, and provide due process protections.

Fraud and identity theft

- Require all workers to use a fraud- and tamper-resistant Social Security card.
- Require that all documents acceptable to establish employment eligibility be fraud- and tamper-resistant.
- Establish a new voluntary pilot program to evaluate new methods of authenticating identity and addressing identity theft.

- Establish new penalties for committing fraud and identity theft. (The plan provides no detail as to what conduct would constitute fraud.)

Worker protections

- Protect workers against retaliation for exercising their labor rights.
- Create a labor law enforcement fund to ensure that industries where large numbers of immigrants are employed comply with labor laws.

4. A streamlined process for highly skilled immigrants and immigrant family members to come to or remain in the U.S.

People waiting to be reunited with family would no longer be subject to lengthy visa backlogs

- More visas would be available by recapturing unused past visas and temporarily increasing visa numbers.
- For the first time, people with same-sex partners would have the opportunity to apply to immigrate family members on the basis of their family relationship with their partner.
- Unlawful presence bars, which often prevent people from adjusting to lawful permanent resident status, would be revised. Immigration authorities also would have broader discretion to waive unlawful presence bars based on hardship.

Significant employment visa changes

- Per-country caps would be eliminated and additional visas would be available to employers. Certain visa categories would not be subject to annual limits.
- Immigrants who earned a master's degree or Ph.D. in science, technology, engineering, or math (STEM) from a university in the U.S. and had found employment would be allowed to apply for a green card and eventual citizenship.
- Employers who offer employment to a STEM student would be required to pay a fee that would support the education and training of the next generation of American workers to embark on STEM careers.
- A new startup investor visa would be created, as well as incentives for visa requesters to invest in programs that support national priorities such as economic development in rural and economically depressed areas of the U.S.
- A new visa for highly skilled specialized immigrants would be created.

Humanitarian visas

- Protections for victims of crime and domestic violence would be streamlined.
- Limitations for applying for asylum would be eliminated.

OUR TAKE

THE NATIONAL IMMIGRATION LAW CENTER calls for passage of broad and humane immigration reform that provides a clear roadmap to first-class citizenship for the 11 million aspiring citizens, including DREAMers, currently in the U.S., and that makes it possible for them to fully integrate into the nation's social and economic fabric, with all the rights and responsibilities entailed in full integration. First-class citizenship should ensure that everyone living in the U.S. can fully participate in our democracy. This means everyone should have access to economic supports, affordable health care, workers' rights, and the freedom to live free from fear of detention and deportation. To read more about our legislative priorities for immigration reform, see www.nilc.org/nilcirpriorities2013.html.

Encouraging Overall

Overall, the details of the president's plan are very encouraging, especially in that it recognizes that the road to citizenship should not be contingent upon arbitrary and politicized benchmarks of border security, as the Senate bipartisan framework does. However, requirements such as fees and penalties, as well as English and civics requirements, are a concern because they may create real barriers for low-income immigrants. We support the expedited road to U.S. citizenship for young immigrants, many of whom will likely have already been approved for Deferred Action for Childhood Arrivals (DACA).

NILC is glad to see that the president is committed to reuniting families by eliminating existing backlogs, and that he acknowledges the diversity of families by proposing to allow LGBTQ families to also sponsor their loved ones. The elimination of family- and employment-based visa backlogs will also reduce the period of time aspiring citizens will need to be in a provisional legal status, so that, in theory, the journey to citizenship could be made within a reasonable period of time.

Denial of Access to Health Care

However, the plan contains a fundamental flaw: it would deny many aspiring citizens access to affordable health care. This is foolish. Healthy communities are vital to our economic and societal well-being. Deliberately excluding this portion of the population from access to affordable health care would make care more costly for everyone and undermine our goal of ensuring that everyone living in the U.S. has the freedom to purchase affordable health care coverage. If this element of the plan is included in immigration reform legislation, the president's so-called top legislative priority for his second term would essentially undermine the success of his administration's hallmark achievement in its first term — the Affordable Care Act. This is especially troubling, since the president's plan calls for efforts to promote immigrant integration.

Electronic Employment Eligibility Verification Mandate

We are also deeply concerned about the proposal that employers in the U.S. be required to use an electronic employment eligibility verification system (EEVS). If use of an EEVS is mandated, it is likely to result in an increased number of workers being denied jobs due to errors in the databases on which the EEVS relies. Depending on how many aspiring citizens actually qualify for the provisional legal status or, ultimately, for citizenship, an EEVS mandate may simply push aspiring citizens who do not qualify for provisional status into the informal economy.

Nevertheless, NILC is heartened by the plan's inclusion of privacy and due process protections. We believe there also need to be strong labor protections to prevent employers from using the EEVS in a discriminatory or abusive way. (Read about NILC's concerns with electronic employment eligibility verification programs such as E-Verify at www.nilc.org/concerns.html.)

NILC is equally concerned about the plan's proposal that all workers be required to have a tamper-resistant Social Security card. Such a card would constitute a de facto national ID, and requiring that every worker and would-be worker obtain one and be required to present it to employers would be extremely burdensome for *all* American workers.

Increased Enforcement and New Criminal Provisions

Increased resources for U.S. Customs and Border Protection, an agency that received almost \$12 billion from Congress in FY 2012, are unnecessary at a time when apprehensions at the borders are at an all-time low.

In addition to strengthening civil rights and civil liberties training for Border Patrol officers, any immigration reform measure must also contain strong mechanisms for holding agents who violate individuals' rights accountable.

Adding new criminal provisions to immigration law would be unnecessary and duplicative. Prosecutors can already charge serious traffickers with a range of crimes that carry severe penalties. Similarly, those who engage in fraud and identity theft are already subject to strict criminal sanctions. The plan would target transnational criminal organizations but provides no detailed language about this proposal. Any plan to define new crimes should take into account that existing law already prohibits nearly all conceivably illegal activities related to trafficking.

Experience with existing streamlined processes for deporting immigrants — such as the expedited removal process — demonstrates that government decisions about whom to deport are often opaque and arbitrary.³ We have deep concerns about any new streamlined

³ As of 2011, DHS had pushed nearly 160,000 immigrants — many with deep ties to the U.S. — through an expedited deportation process, sometimes without adequately informing them of their right to a day in court. More information about expedited removal is available in *Deportation Without Due Process* (NILC, Western State Immigration Clinic, and Stanford Law School Immigrant' Rights Clinic, Sept. 2011), www.nilc.org/document.html?id=6.

administrative removal process, particularly one that does not appear to include the right to judicial appeal.

Fees to Be Paid by Employers of STEM Students

As an organization committed to increasing access to education, especially for low-income immigrants, we support the plan's proposal that employers of STEM students be required to pay certain fees. We must ensure such fees are earmarked to create educational opportunities and career ladders in STEM careers for low-income students and workers, many of whom are young people of color.

Alternatives to Detention

NILC is glad to see that the president's plan proposes much-needed alternatives to detention, and that it aims to reduce the overall costs of detention. Similarly, we support its proposed increased protections for crime victims and survivors of domestic violence, as well as fixes to the limitations for asylum-seekers.

Worker Protections

NILC is very pleased to see that the president's plan proposes strong protections for workers against whom employers retaliate when the workers exercise their labor or civil rights. We also applaud the plan's proposed increased penalties against employers who hire unauthorized workers in order to avoid their responsibility under labor and employment laws. This is the type of "smart enforcement" the administration should be focusing on; by contrast, its current detention and deportation practices often result in these very workers being deported.⁴

⁴ One way to systematically strengthen worker protections would be to enact the POWER (Protect Our Workers from Exploitation and Retaliation) Act's provisions as part of immigration reform. By mandating changes in how DHS conducts worksite immigration enforcement and by creating new protections for workers, POWER would help ensure that enforcement of federal immigration law does not undermine workers' basic job-related rights. See *Protect Our Workers from Exploitation and Retaliation Act* (NILC, June 2011), www.nilc.org/power-act-2011-06-08.html.