



# Immigration Reform Issues in the 111<sup>th</sup> Congress

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## 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. 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—12.6%—not seen since the early 20<sup>th</sup> century. Of the 38 million foreign-born residents in the United States, approximately one-third are naturalized citizens, one-third are legal permanent residents, and one-third are estimated to be unauthorized (illegal) residents. Some observers and policy experts maintain that the presence of an estimated 11 million unauthorized residents is evidence of flaws in the legal immigration system as well as failures of immigration control policies and practices.

The 111<sup>th</sup> Congress is faced with strategic questions of whether to continue to build on incremental reforms of specific elements of immigration (e.g., employment verification, skilled migration, temporary workers, worksite enforcement, and legalization of certain categories of unauthorized residents) or whether to comprehensively reform the Immigration and Nationality Act (INA). President Barack Obama has affirmed his support for comprehensive immigration reform legislation that includes increased enforcement as well as a pathway to legal residence for certain unauthorized residents.

This report synthesizes the multi-tiered debate over immigration reform into key elements: legal immigration; legalization; immigration control; refugees, asylees, and humanitarian migrants; and, alien rights, benefits and responsibilities. It delineates the issues for the 111<sup>th</sup> Congress on permanent residence, temporary admissions, border security, worksite enforcement, employment eligibility verification, document fraud, criminal aliens, and the grounds for inadmissibility. Addressing these contentious policy reforms against the backdrop of economic crisis sharpens the social and business cleavages and narrows the range of options.

The report will be updated as events warrant.

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## Introduction

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—12.6%—not seen since the early 20<sup>th</sup> century. Of the 38 million foreign-born residents in the United States, approximately one-third are naturalized citizens, one-third are legal permanent residents, and one-third are estimated to be unauthorized (illegal) residents.<sup>1</sup> Some observers and policy experts maintain that the presence of an estimated 11 million unauthorized residents is evidence of flaws in the legal immigration system as well as failures of immigration control policies and practices.

There is, indeed, 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. Substantial efforts to reform immigration law have failed in the recent past, prompting some to characterize the issue as a “zero-sum game” or a “third rail.” The thorniest of these immigration issues centers on policies directed toward unauthorized aliens in the United States.

That the economy is in a recession further complicates efforts to reform immigration law. Historically, international migration ebbs during economic crises; e.g., immigration to the United States was at its lowest levels during the Great Depression. While preliminary statistical trends suggest a slowing of migration pressures, it remains unclear how the current economic recession will affect immigration to the United States.<sup>2</sup> Whether the Congress will act to alter immigration policies—either in the form of comprehensive immigration reform or in the form of incremental revisions aimed at strategic changes—is at the crux of the debate. Addressing these contentious policy reforms against the backdrop of economic crisis sharpens the social and business cleavages and may narrow the range of options.

This report synthesizes the following components of the reform debate: legal immigration; legalization; immigration control; refugees, asylees, and humanitarian migrants; and, alien rights, benefits and responsibilities; and offers a roadmap to other Congressional Research Service reports that more fully analyze the policy options.

## Legal Immigration

The challenge inherent in this policy issue is balancing employers’ hopes to have access to a supply of legally present foreign workers, families’ longing to reunite and live together, and a widely-shared wish among the stakeholders to improve the policies governing legal immigration into the country. The scope of this issue includes temporary admissions (e.g., guest workers, foreign students) and permanent admissions (e.g. employment-based, family-based immigrants).

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<sup>1</sup> Jeffrey Passel and D’Vera Cohn, *Trends in Unauthorized Immigration: Undocumented Inflow Now Trails Legal Inflow*, Pew Hispanic Center, October 2, 2008.

<sup>2</sup> “While immigrants on average share the demographic characteristics of the workers who are most vulnerable during recessions (including relative youth, lower levels of education and recent entry into the labor force), they also may be able to adjust more quickly than native-born workers to fluctuating labor market conditions because they are more amenable to moving and changing job sectors.” Demetrios Papademetriou and Aaron Terrazas, *Immigrants and the Current Economic Crisis*, Migration Policy Institute, January 2009.

## Permanent Residence

Four major principles underlie current U.S. policy on permanent immigration: the reunification of families, the admission of immigrants with needed skills, the protection of refugees, and the diversity of admissions by country of origin. The Immigration and Nationality Act (INA) specifies a complex set of numerical limits and preference categories that give priorities for permanent immigration reflecting these principles. Legal permanent residents (LPRs) refer to foreign nationals who live lawfully and permanently in the United States.

Although the INA establishes a worldwide level of permanent admission at 675,000, it allows for admission beyond these limits.<sup>3</sup> The family-based level of LPR admissions is set at 480,000, but immediate relatives of U.S. citizens may enter in a number that exceeds the statutory caps. The INA also provides a floor of 226,000 for the other categories of family-based LPRs.<sup>4</sup> The statutory limit on employment-based LPRs is 140,000 annually.<sup>5</sup> The INA allocated 55,000 for diversity visas to LPRs from countries underrepresented in the family and employment preference categories. The INA establishes per-country levels at 7% of the worldwide level.<sup>6</sup> For a dependent foreign state, the per-country ceiling is 2%.<sup>7</sup>

During FY2008, a total of 1.1 million aliens became LPRs in the United States. Of this total, 64.7% entered on the basis of family ties. Immediate relatives of U.S. citizens made up the single largest group of immigrants—488,483—in FY2008. Other major categories in FY2008 were employment-based LPRs (including spouses and children) and refugees/asylees adjusting to LPR status—both at 15.0%.

A variety of constituencies are advocating a significant reallocation from the family-based to the employment-based visa categories or a substantial increase in legal immigration to meet a growing demand from families and employers in the United States for visas. Even as U.S. unemployment levels rise, employers assert that they continue to need the “best and the brightest” workers, regardless of their country of birth, to remain competitive in a worldwide market and to keep their firms in the United States. While support for the option of increasing employment based immigration may be dampened by the economic recession, proponents argue it is an essential ingredient for economic growth.

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<sup>3</sup> Refugees and asylees adjusting to LPR status are not counted against the 675,000 ceiling.

<sup>4</sup> The numerically limited family preference categories are (1) unmarried sons and daughters of citizens, (2) spouses and children of LPRs, (3) unmarried sons and daughters of LPRs, (4) married sons and daughters of citizens, and (5) siblings of citizens age 21 and over.

<sup>5</sup> The employment-based preference categories are persons of extraordinary ability in the arts, science, education, business, or athletics; outstanding professors and researchers; and certain multi-national executives and managers; members of the professions holding advanced degrees or persons of exceptional abilities in the sciences, art, or business; skilled shortage workers with at least two years training or experience, professionals with baccalaureate degrees; unskilled shortage workers; “special immigrants,” including ministers of religion, religious workers other than ministers, certain employees of the U.S. government abroad, and others; and employment creation investors who invest at least \$1 million (amount may vary in rural areas or areas of high unemployment) that will create at least 10 new jobs.

<sup>6</sup> § 202(a)(2) of the INA; 8 U.S.C. § 1151.

<sup>7</sup> There are two important exceptions to the per-country ceilings. Foremost is an exception that 75% of the visas allocated to spouses and children of LPRs are not subject to the per-country ceiling. Additionally, the per-country ceilings for employment-based immigrants may be surpassed for individual countries that are oversubscribed, as long as visas are available within the worldwide limit for employment-based preferences (140,000).

Proponents of family-based migration alternatively point to the significant backlogs in family based immigration due to the sheer volume of aliens eligible to immigrate to the United States and maintain that any proposal to increase immigration levels should also include the option of family-based backlog reduction. Citizens and LPRs often wait years for their relatives' petitions to be processed and visa numbers to become available.

Against these competing priorities for increased immigration are those who offer options to scale back immigration levels, with options ranging from limiting family-based LPRs to the immediate relatives of U.S. citizens to confining employment-based LPRs to exceptional, extraordinary or outstanding individuals.<sup>8</sup> Legislation aimed at eliminating the diversity visa lottery arises as well.

## Temporary Admissions

The INA provides for the temporary admission of various categories of foreign nationals, who are known as nonimmigrants.<sup>9</sup> Nonimmigrants are admitted for a temporary period of time and a specific purpose. They include a wide range of visitors, including tourists, students, and temporary workers. Among the temporary worker provisions are the H-1B visa for professional specialty workers, the H-2A visa for agricultural workers, and the H-2B visa for nonagricultural workers. Foreign nationals also may be temporarily admitted to the United States for employment-related purposes under other categories, including the B-1 visa for business visitors, the E visa for treaty traders and investors, and the L-1 visa for intracompany transfers.

Some business people express concern that a scarcity of labor in certain sectors may curtail the pace of economic growth at a time when encouraging economic growth is paramount. A leading legislative response to skills mismatches is to increase the supply of temporary foreign workers (rather than importing permanent workers). While the demand for more skilled and highly-trained foreign workers garners much of the attention (e.g., lifting the ceiling on H-1B visas or set-asides of visas for foreign graduates of U.S. universities), pressure to increase unskilled temporary foreign workers, commonly referred to as guest workers, also remains. Those opposing increases in temporary workers assert that there is no compelling evidence of labor shortages and cite the growing rate of unemployment.<sup>10</sup> Opponents argue that continuing temporary foreign workers programs during an economic recession would have a deleterious effect on salaries, compensation, and working conditions of U.S. workers.<sup>11</sup> Most recently, some are suggesting that temporary foreign workers visas should be scaled back or placed in moratorium during the economic recession.

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<sup>8</sup> CRS Report RL32235, *U.S. Immigration Policy on Permanent Admissions*, by Ruth Ellen Wasem.

<sup>9</sup> For further discussion, see CRS Report RL31381, *U.S. Immigration Policy on Temporary Admissions*, by Chad C. Haddal and Ruth Ellen Wasem.

<sup>10</sup> For further discussion, see CRS Report R40080, *Job Loss and Infrastructure Job Creation During the Recession*, by Linda Levine.

<sup>11</sup> For further discussion, see CRS Report RL33977, *Immigration of Foreign Workers: Labor Market Tests and Protections*, by Ruth Ellen Wasem; and CRS Report 95-408, *Immigration: The Effects on Low-Skilled and High-Skilled Native-Born Workers*, by Linda Levine.

## Legalization

The debate over legal immigration reform is complicated by proposals to enable unauthorized aliens residing in the United States to become LPRs, (commonly termed “amnesty” by opponents and “earned legalization” by supporters).<sup>12</sup> There are a range of options being offered, and these alternatives generally require the unauthorized aliens to meet specified conditions and terms as well as pay penalty fees to legalize their status.<sup>13</sup> Examples would include documenting physical presence in the United States over a specified period; demonstrating employment for specified periods; showing payment of income taxes; or leaving the United States to obtain the legal status. Using a point system that credits aliens with equities in the United States (e.g., work history, tax records, and family ties) would be another possible option. Other avenues for legalization would be guest worker visas tailored for unauthorized aliens in the United States or a legalization program that would replace guest worker visas.<sup>14</sup> There are also options (commonly referred to as the DREAM Act) that would enable some unauthorized alien students to become LPRs through an immigration procedure known as cancellation of removal.<sup>15</sup>

Advocates for these legalization avenues maintain that unauthorized residents are working, paying taxes, and contributing to the community. Some also point out that legalization would provide employers with a substantially increased legal workforce without importing additional foreign workers. Opponents maintain that legalization rewards illegal actions at the expense of potential immigrants who are waiting to come legally. They further argue that it would serve as a magnet for future flows of unauthorized migrants.

## Immigration Control

Reassessing immigration control policies and agencies and considering options for more effective enforcement of the INA are integral to immigration reform. Immigration control encompasses an array of enforcement tools, policies, and practices to prevent and investigate violations of immigration laws. The spectrum of enforcement issues ranges from visa policy at consular posts abroad and border security along the country’s perimeter, to the apprehension, detention, and removal of unauthorized aliens in the interior of the country. If the flow of unauthorized migrants is abating during the economic recession, some may seek to divert resources from immigration control activities to other areas.<sup>16</sup> Illustrative among these issues likely to arise in the 111<sup>th</sup>

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<sup>12</sup> For further discussion, see CRS Report RL33874, *Unauthorized Aliens Residing in the United States: Estimates Since 1986*, by Ruth Ellen Wasem.

<sup>13</sup> For further discussion, see CRS Report RS22111, *Alien Legalization and Adjustment of Status: A Primer*, by Ruth Ellen Wasem.

<sup>14</sup> For further discussion, see CRS Report RL32044, *Immigration: Policy Considerations Related to Guest Worker Programs*, by Andorra Bruno.

<sup>15</sup> For further discussion, see CRS Report RL33863, *Unauthorized Alien Students: Issues and “DREAM Act” Legislation*, by Andorra Bruno.

<sup>16</sup> The size of the unauthorized population appears to have declined since 2007. Jeffrey Passel and D’Vera Cohn, *Trends in Unauthorized Immigration: Undocumented Inflow Now Trails Legal Inflow*, Pew Hispanic Center, October 2, 2008. Other researchers have found: “The estimated decline of the illegal population is at least seven times larger than the number of illegal aliens removed by the government in the last 10 months, so most of the decline is due to illegal immigrants leaving the country on their own.” Steven A. Camarota and Karen Jensenius, *Homeward Bound: Recent Immigration Enforcement and the Decline in the Illegal Alien Population*, Center for Immigration Studies, July 2008.

Congress are border security, worksite enforcement, document fraud, criminal aliens and the grounds for inadmissibility.

## **Border Security**

Border security involves securing the many means by which people and goods 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 interdict illegal entries. In recent years, Congress has passed a series of provisions and funding streams aimed at strengthening immigration-related border security. Border Patrol apprehensions of unauthorized migrants along the southern border in 2008 were reportedly at the lowest level since the 1970's, with competing credit given to the economic crisis and to increased border control and enforcement.<sup>17</sup> One flashpoint of this debate is the construction of a "virtual fence" as well as physical barriers along the border.<sup>18</sup> Whether additional changes are needed to further control the border remains a question.

## **Worksite Enforcement**

For two decades it has been unlawful for an employer to knowingly hire, recruit or refer for a fee, or continue to employ an alien who is not authorized to be so employed. The large and growing number of unauthorized aliens in the United States, the majority of whom are in the labor force, led many to criticize the adequacy of the current worksite enforcement measures. In response, highly visible worksite raids by the U.S. Department of Homeland Security's (DHS) Immigration and Customs Enforcement (ICE) bureau during 2007-2008 have sparked praise among some and alarm among others. Critics of the ICE worksite raids assert that the government is targeting low-wage foreign workers rather than the employers who hire them. Former DHS Secretary Michael Chertoff argued, however, that cases against supervisors and employers often depend on proving knowledge and intent, making it more difficult to build a criminal case against an employer.<sup>19</sup> Efforts to strengthen worksite enforcement, however, are sometimes met by fears that more stringent penalties may inadvertently foster discrimination against legal workers with foreign appearances.<sup>20</sup> Most recently, DHS Secretary Janet Napolitano has called for a thorough review, specifically requesting ICE agents to apply more scrutiny to the selection and investigation of worksite raids, which might be signaling a policy shift.<sup>21</sup>

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<sup>17</sup> "The border closes," *The Economist*, December 18, 2008.

<sup>18</sup> CRS Report RL33659, *Border Security: Barriers Along the U.S. International Border*, by Chad C. Haddal, Yule Kim, and Michael John Garcia.

<sup>19</sup> Michael Chertoff, *Myth vs. Fact: Worksite Enforcement*, U.S. Department of Homeland Security, Leadership Journal, July 9, 2008.

<sup>20</sup> For further discussion, see CRS Report R40002, *Immigration-Related Worksite Enforcement: Performance Measures*, by Andorra Bruno

<sup>21</sup> Spencer S. Hsu, "DHS Signals Policy Changes Ahead for Immigration Raids," *The Washington Post*, March 29, 2009.



## **Employment Eligibility Verification**

All employers are required to participate in a paper-based employment eligibility verification system in which they examine documents presented by every new hire to verify the person's identity and work eligibility.<sup>22</sup> Employers also may opt to participate in an electronic employment eligibility verification program, known as E-Verify, which checks the new hires' employment authorization through Social Security Administration and, if necessary, DHS databases.<sup>23</sup> Employer organizations have long complained that E-Verify is too costly and poses practical and technical problems. Other critics maintain its expansion would make applying for jobs a hassle for all U.S. citizens and would effectively deny some law-abiding individuals the ability to work. According to DHS, however, E-Verify immediately verifies almost everyone who is authorized to work in the United States. DHS further reports that only about 0.5% of legal workers receive a tentative non-confirmation and, as a result, need to correct their records. The authorizing legislation for the optional E-Verify program was temporarily extended in March 2009 by the Omnibus Appropriations Act, 2009 (P.L. 111-8) and is now scheduled to terminate on September 30, 2009. Whether to extend, revise and possibly require all employers to conduct electronic employment eligibility verification of all new hires or all of their employees will continue to be an issue in the 111<sup>th</sup> Congress.<sup>24</sup>

## **Document Fraud**

Immigration-related document fraud includes the counterfeiting, sale, and use of identity documents (e.g., birth certificates or Social Security cards), as well as employment authorizations, passports, or visas. The INA has civil enforcement provisions for individuals and entities proven to have engaged in immigration document fraud. In addition, the U.S. Criminal Code makes it a criminal offense for a person to knowingly produce, use, or facilitate the production or use of fraudulent immigration documents. More generally, the U.S. Criminal Code criminalizes the knowing commission of fraud in connection with a wide range of identification documents. When ICE began charging aliens arrested in worksite raids with criminal offenses, including identity theft and false use of a Social Security number, advocates for the unauthorized aliens argued that such charges were excessive. These advocates maintained that showing bogus documents in order to work does not constitute identity theft and that civil penalties for document fraud should have been sufficient. Those supporting the stepped up enforcement emphasize that ICE should prosecute offenders with the full force of the laws. The integrity of the documents issued for immigration purposes, the capacity to curb immigration fraud, and the distinctions between identity theft and immigration fraud are among the central elements of the document fraud issue.

## **Criminal Aliens**

A criminal alien, simply put, is a foreign national convicted of a criminal offense. Criminal offenses in the context of immigration law cover violations of federal, state, or, in some cases,

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<sup>22</sup> For further discussion, see CRS Report RL33973, *Unauthorized Employment in the United States: Issues, Options, and Legislation*, by Andorra Bruno.

<sup>23</sup> CRS Report RL32004, *Social Security Benefits for Noncitizens: Current Policy and Legislation*, by Dawn Nuschler and Alison Siskin.

<sup>24</sup> CRS Report R40446, *Electronic Employment Eligibility Verification*, by Andorra Bruno.

foreign criminal law. Most crimes affecting immigration status fall under a broad category of crimes defined in the INA, notably those involving moral turpitude or aggravated felonies. It does not cover violations of the INA that are not defined as crimes, such as being an unauthorized alien in the United States.<sup>25</sup> The ICE estimates there are as many as 450,000 criminal aliens in federal, state and local prisons and detention centers. There has been bipartisan agreement for over a decade to dedicate a portion of immigration enforcement resources to the removal of criminal aliens. In one of her first press conferences after becoming Homeland Security Secretary, Janet Napolitano stated that the removal of criminal aliens would be one of her top priorities.<sup>26</sup> An emerging issue is whether current law on who is a criminal alien under the INA encompasses individuals whom many people would not consider dangerous. Critics of a hard-line approach cite examples of people who they argue should not be deported as criminal aliens: someone who shoplifted years ago; an elderly LPR of color who was arrested in the 1960s by a police department known at that time for racism; or, a longtime LPR who pled guilty to attempted possession of a controlled substance 20 years ago—all of whom could have U.S. citizen spouses and U.S. citizen children.<sup>27</sup>

## Grounds for Inadmissibility

Legislation aimed at comprehensive immigration reform may take a fresh look at the grounds for excluding foreign nationals that were enacted in the 1990s. All foreign nationals seeking visas must undergo admissibility reviews performed by U.S. Department of State (DOS) consular officers abroad.<sup>28</sup> These reviews are intended to ensure that they are not ineligible for visas or admission under the grounds for inadmissibility spelled out in the INA. These criteria are: health-related grounds; criminal history; security and terrorist concerns; public charge (e.g., indigence); seeking to work without proper labor certification; illegal entrants and immigration law violations; ineligible for citizenship; and, aliens previously removed.<sup>29</sup> Over the past year, Congress incrementally revised the grounds for inadmissibility. Two laws enacted in the 110<sup>th</sup> Congress altered longstanding policies on exclusion of aliens due to membership in organizations deemed terrorist.<sup>30</sup> The 110<sup>th</sup> Congress also revisited the health-related grounds of inadmissibility for those who were diagnosed with HIV/AIDS.<sup>31</sup> Most recently, the “H1N1 swine flu” outbreak focused the spotlight on inadmissibility screenings at the border.<sup>32</sup> Questions about the public

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<sup>25</sup> For further discussion, see CRS Report RL32480, *Immigration Consequences of Criminal Activity*, by Yule Kim and Michael John Garcia.

<sup>26</sup> Eileen Sullivan, “Homeland Secretary Wants to Deport Criminal Illegal Immigrants,” *The Associated Press*, January 29, 2009.

<sup>27</sup> Melissa Cook, “Banished For Minor Crimes: The Aggravated Felony Provision of the Immigration and Nationality Act as a Human Rights Violation,” *Boston College Third World Law Journal*, 2003; Committee on Criminal Justice Operations, *The Immigration Consequences of Deferred Adjudication Programs in New York City*, Association of the Bar of the City of New York, New York City, NY, June 2007.

<sup>28</sup> U.S. Citizenship and Immigration Service (USCIS) adjudicators also conduct admissibility reviews for petitions filed within the United States, and Customs and Border Protection inspectors do so when aliens seek entry to the United States.

<sup>29</sup> §212(a) of the INA.

<sup>30</sup> P.L. 110-257 expressly excluded the African National Congress from being considered a terrorist organization and P.L. 110-161 exempted 10 groups from being considered as terrorist organizations for INA purposes.

<sup>31</sup> P.L. 110-293 amended the INA to strike the reference to HIV/AIDS from the health-related grounds for exclusion.

<sup>32</sup> CRS Report R40570, *Immigration Policies and Issues on Health-Related Grounds for Exclusion*, by Chad C. Haddal and Ruth Ellen Wasem.

charge ground of inadmissibility arose in the context of Medicaid and the state Children's Health Insurance Program (CHIP) in the 111<sup>th</sup> Congress.<sup>33</sup> While advocacy of sweeping changes to the grounds for inadmissibility has not emerged, proponents of comprehensive immigration reform might seek to ease a few of these provisions as part of the legislative proposals. The provision that makes an alien who is unlawfully present in the United States for longer than 180 days inadmissible, for example, might be waived as part of a legislative package that includes legalization provisions. Tightening up the grounds for inadmissibility, conversely, might be part of the legislative agenda among those who support more restrictive immigration reform policies.

## Refugee, Asylee, and Humanitarian Concerns

While refugee, asylee and humanitarian concerns have traditionally been treated as distinct from immigration reform, comprehensive reform legislation may include provisions that impact these issue areas. As precedent, asylum reforms were included in the 1990 and the 1996 overhauls of the INA.<sup>34</sup> Additionally, the foreign nationals who have been denied asylum or who have had temporary protected status (TPS) in the United States for many years may often be covered by legalization or status adjustment provisions.<sup>35</sup>

Those who would revise refugee and asylum provisions in the INA have divergent perspectives. Some express concern that potential terrorists could use refugee status or asylum as an avenue for entry into the United States, especially aliens from trouble spots in the Mideast, northern Africa and south Asia.<sup>36</sup> Some assert that the non-governmental organizations and contractors for the United Nations that assist displaced people are expanding the definition of "refugee" to cover people never before considered refugees.<sup>37</sup> Others argue that—given the religious, ethnic, and political violence in various countries around the world—it is becoming more difficult to differentiate the *persecuted* from the *persecutors*.<sup>38</sup> Others maintain that current law does not offer adequate protections for people fleeing human rights violations and gender-based abuses that occur around the world,<sup>39</sup> or that it is time to re-think U.S. refugee policy.<sup>40</sup>

As a signatory to the United Nations Protocol Relating to the Status of Refugees, the United States agrees that it will not return an alien to a country where his life or freedom would be threatened. A refugee is a person fleeing his or her country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular

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<sup>33</sup> CRS Report R40144, *State Medicaid and SCHIP Coverage of Noncitizens*, by Ruth Ellen Wasem.

<sup>34</sup> For a legislative history, see CRS Report RL32621, *U.S. Immigration Policy on Asylum Seekers*, by Ruth Ellen Wasem; and CRS Report RL33109, *Immigration Policy on Expedited Removal of Aliens*, by Alison Siskin and Ruth Ellen Wasem.

<sup>35</sup> CRS Report RS20844, *Temporary Protected Status: Current Immigration Policy and Issues*, by Ruth Ellen Wasem and Karma Ester.

<sup>36</sup> Won Kidane, "The Terrorism Exception to Asylum: Managing the Uncertainty in Status Determination," *University of Michigan Journal of Law Reform*, vol. 41, no. 3 (2008).

<sup>37</sup> Don Barnett, *A New Era of Refugee Resettlement*, Center for Immigration Studies, Background, December 2006.

<sup>38</sup> Scott Michels, "Doctor May Be Denied Asylum for Treating 'Terrorists'," *ABC News Law and Justice Unit*, August 14, 2008.

<sup>39</sup> Lisa Frydman and Kim Thuy Seelinger, "Kasinga's Protection Undermined? Recent Developments in Female Genital Cutting Jurisprudence," *Bender's Immigration Bulletin*, vol. 13 (September 1, 2008).

<sup>40</sup> Mariano-Florentino Cuéllar, "The Limits of the Limits of Idealism: Rethinking American Refugee Policy in an Insecure World," *Harvard Law & Policy Review*, vol. 1 (2007).

social group, or political opinion. Asylum-seekers are individuals who apply for refugee protections after they have arrived in the United States. Those granted asylum as well as those who are determined to be refugees are eligible to become LPRs after one year in the United States. Not all humanitarian migrants, however, are eligible for asylum or refugee status. When civil unrest, violence, or natural disasters erupt in spots around the world, the United States may offer TPS or relief from removal, for example.

How to establish an appropriate balance among the goals of protecting vulnerable and displaced people, maintaining homeland security, and minimizing the abuse of humanitarian policies is the crux of this issue. Specific topics include refugee resettlement, asylum policy, temporary protected status, unaccompanied alien children, and victims of trafficking and torture.<sup>41</sup> War, violence, civil unrest, economic destabilization, or food crisis, for example, would trigger the urgency of these issues in the 111<sup>th</sup> Congress. The recent economic downturn could lead to an escalation in the worldwide supply of refugees and asylum-seekers at the same time that budgetary pressures warrant shifting resources away from refugees and asylee to other funding priorities.

## **Alien Rights, Benefits and Responsibilities**

The degree to which foreign nationals should be accorded certain rights and privileges as a result of their presence in the United States, along with the duties owed by such aliens given their legal status, sparks debate. Any immigration legislation, whether it expands, alters, or retracts migration levels, will likely prompt a debate over potential trade-offs and impacts on alien rights and responsibilities. All persons in the United States, whether U.S. nationals or foreign nationals, are accorded certain rights under the U.S. Constitution. However, foreign nationals do not enjoy the same degree of constitutional protections as U.S. citizens. Aliens who legally reside in the United States, moreover, possess greater constitutional protections than those aliens who do not. Federal laws, for example, place comprehensive restrictions on noncitizens' access to means-tested public assistance, with exceptions for LPRs with a substantial U.S. work history. Aliens in the United States without authorization (i.e., illegally present) are ineligible for federal public benefits, except for specified emergency services. Nonetheless, controversies and confusion abound, particularly regarding the eligibility of families comprised of people with a mix of immigration and citizenship status, such as an LPR married to an unauthorized alien with U.S. citizen children.<sup>42</sup>

A corollary issue are foreign nationals who have temporary employment authorizations and social security numbers, but who are not LPRs. Although it does not address the legality of the alien's immigration status, the Internal Revenue Code makes clear that "resident aliens" are generally taxed in the same manner as U.S. citizens. Those who are temporary legal residents or "quasi-

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<sup>41</sup> For further discussion, see CRS Report R40117, *Refugee and Asylum-Seeker Inflows in the United States and Other OECD Member States*, by Chad C. Haddal; CRS Report RL31269, *Refugee Admissions and Resettlement Policy*, by Andorra Bruno; CRS Report RS20844, *Temporary Protected Status: Current Immigration Policy and Issues*, by Ruth Ellen Wasem and Karma Ester; and CRS Report RL34317, *Trafficking in Persons: U.S. Policy and Issues for Congress*, by Liana Sun Wyler, Alison Siskin, and Clare Ribando Seelke.

<sup>42</sup> For further discussion, see CRS Report R40144, *State Medicaid and SCHIP Coverage of Noncitizens*, by Ruth Ellen Wasem; CRS Report RL33809, *Noncitizen Eligibility for Federal Public Assistance: Policy Overview and Trends*, by Ruth Ellen Wasem; and CRS Report RL34500, *Unauthorized Aliens' Access to Federal Benefits: Policy and Issues*, by Ruth Ellen Wasem.

legal” migrants pose a particular dilemma to some because they are permitted to work and have likely paid into the system that finances a particular benefit, such as social security or a tax refund, for which they may not be eligible.<sup>43</sup> Unintended consequences, most notably when tightening up the identification requirements to stymie false claims of citizenship results in denying benefits to U.S. citizens, add complexity to the debate.<sup>44</sup> These issues are arising in the context of specific legislation on due process rights, access to health care, tax liabilities and refunds, educational opportunities, and means-tested federal assistance.

## Legislative Prospects

In the 110<sup>th</sup> Congress, Senate action on comprehensive immigration reform legislation stalled at the end of June 2007 after several weeks of intensive floor debate. At the same time, the House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law held multiple hearings weekly in April, May and June of 2007 on various aspects of immigration reform. The House, however, did not act on comprehensive legislation in the 110<sup>th</sup> Congress.<sup>45</sup> During the 109<sup>th</sup> Congress, both chambers passed major overhauls of immigration law, but did not reach agreement on a comprehensive reform package.<sup>46</sup>

During his time in the Senate, President Barack Obama supported comprehensive immigration reform legislation that included increased enforcement as well as a pathway to legal residence for certain unauthorized residents.<sup>47</sup> Similar views have been expressed by the Secretary of Homeland Security Janet Napolitano.<sup>48</sup> The Obama Administration has outlined its principles for comprehensive immigration reform as follows:

Create Secure Borders: Protect the integrity of our borders. Support additional personnel, infrastructure and technology on the border and at our ports of entry.

Improve Our Immigration System: Fix the dysfunctional immigration bureaucracy and increase the number of legal immigrants to keep families together and meet the demand for jobs that employers cannot fill.

Remove Incentives to Enter Illegally: Remove incentives to enter the country illegally by cracking down on employers who hire undocumented immigrants.

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<sup>43</sup> For further discussion, see CRS Report RS21732, *Federal Taxation of Aliens Working in the United States and Selected Legislation*, by Erika K. Lunder; and CRS Report RL32004, *Social Security Benefits for Noncitizens: Current Policy and Legislation*, by Dawn Nuschler and Alison Siskin.

<sup>44</sup> For further discussion, see CRS Report RS22629, *Medicaid Citizenship Documentation*, by Ruth Ellen Wasem.

<sup>45</sup> For further discussion, see CRS Report RL34204, *Immigration Legislation and Issues in the 110<sup>th</sup> Congress*, coordinated by Andorra Bruno.

<sup>46</sup> For further discussion, see CRS Report RL33125, *Immigration Legislation and Issues in the 109th Congress*, coordinated by Andorra Bruno.

<sup>47</sup> Jennifer Ludden, “Immigration Issue Doesn’t Divide McCain, Obama,” *National Public Radio*, June 10, 2008, Morning Edition; Lisa Goddard, “The Senate Immigration Vote: How They Voted,” *CNN.com Politics*, June 29, 2007.

<sup>48</sup> John Pomfret, “At Front Line of Immigration Debate Ariz. Governor Favors Tough Enforcement But Humane Treatment,” *Washington Post*, May 26, 2006; Daniel González and Sean Holstege, “Napolitano Pick Signals Moderate Immigration Approach,” *The Arizona Republic*, November 21, 2008.

Bring People Out of the Shadows: Support a system that allows undocumented immigrants who are in good standing to pay a fine, learn English, and go to the back of the line for the opportunity to become citizens.

Work with Mexico: Promote economic development in Mexico to decrease illegal immigration.<sup>49</sup>

The Obama Administration has reportedly stated that comprehensive immigration reform will be a top priority, along with other competing priorities in the areas of domestic and foreign policy. In February 2009, President Obama said, “we're going to be convening leadership on this issue so that we can start getting that legislation drawn up over the next several months.”<sup>50</sup> President Obama and officials in his Administration met with Members of Congress from both parties at a June 25, 2009, meeting on comprehensive immigration reform at the White House.<sup>51</sup>

It is precedented and usual, however, for Congress to take the lead on immigration legislation. Senate Judiciary Subcommittee on Immigration, Refugees and Border Security Chairman Charles Schumer has stated that comprehensive immigration reform legislation could be taken up as soon as later in 2009, but only if the first priority is a crackdown on illegal immigration.<sup>52</sup> Senator Schumer has stated his principles for reform, summarized as follows:

- dramatically curtail future illegal immigration;
- significant additional increases in infrastructure, technology, and border personnel;
- illegal aliens must register their presence and submit to a rigorous process of converting to legal status and earning a path to citizenship, or face imminent deportation;
- biometric-based employer verification system;
- more room for both family immigration and employment-based immigration;
- encourage the world’s best and brightest individuals to immigrate, but discourage businesses from using our immigration laws as a means to obtain temporary and less-expensive foreign labor; and
- convert the current flow of unskilled illegal immigrants into the United States into a more manageable and controlled flow of legal immigrants.<sup>53</sup>

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<sup>49</sup> The White House of President Barack Obama, *The Agenda: Immigration*, available on-line at <http://www.whitehouse.gov/agenda/immigration/>, accessed March 27, 2009.

<sup>50</sup> Jake Tapper, “President Obama and Immigration Reform,” *ABC News*, April 9, 2009.

<sup>51</sup> The White House of President Barack Obama, “Remarks by the President after meeting with Members of Congress to discuss immigration,” press release, June 25, 2009, [http://www.whitehouse.gov/the\\_press\\_office/Remarks-by-the-President-after-meeting-with-members-of-Congress-to-discuss-immigration/](http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-after-meeting-with-members-of-Congress-to-discuss-immigration/), accessed July 8, 2009.

<sup>52</sup> Senator Charles E. Schumer, “Schumer Announces Principles for Comprehensive Immigration Reform Bill in Works in Senate,” press release, June 24, 2009, [http://schumer.senate.gov/new\\_website/record.cfm?id=314990](http://schumer.senate.gov/new_website/record.cfm?id=314990), accessed July 8, 2009.

<sup>53</sup> Senator Charles E. Schumer, Remarks at the 6<sup>th</sup> Annual Immigration Law and Policy Conference, Migration Policy Institute, Washington, DC, June 24, 2009, <http://www.migrationpolicy.org/pubs/Schumer-remarks-Law-Policy-Conference-06-24-09.pdf>, accessed July 7, 2009.

The ranking Republican on the Senate Judiciary Subcommittee on Immigration, Refugees and Border Security, Senator John Cornyn, has stated his willingness to continue working on immigration reform: “Comprehensive, common-sense immigration reform remains a top priority for me. Any legislation must protect our borders, promote economic prosperity in Texas and throughout the United States, and be consistent with our American values of compassion, family, and opportunity.”<sup>54</sup> Senator Cornyn’s articulated his principles for immigration reform, summarized as follows:

- strengthen border security first;
- strengthen interior security;
- create tamper-proof identification and deliver a reliable employer verification system;
- streamline the temporary worker programs and offer visas to more highly-skilled workers; and
- deliver a fair but firm solution to the millions of men, women, and children who are here in violation of our laws.<sup>55</sup>

Despite the similar sounds across these three sets of principles, achieving these consensus likely will be daunting. The ranking Republican on the House Judiciary Committee, Representative Lamar Smith, offers a counter perspective: “To achieve immigration reform, the choices are not just amnesty or mass deportation. A strategy of ‘attrition through enforcement’ would dramatically reduce the number of illegal immigrants over time.”<sup>56</sup> The difficulties in accomplishing immigration reform were underscored by Vice President Joseph Biden when he was asked about the chances of extending temporary migrant protection programs: “We believe, the President and I, that this problem can only be solved in the context of an overall immigration reform.” Biden further stated, “We need some forbearance as we try to put together a comprehensive approach to deal with this.”<sup>57</sup>

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<sup>54</sup> Senator John Cornyn, “Immigration Reform & Border Security: I Agree With President Obama, Comprehensive Immigration Reform Must Be Addressed This Year,” press release, April 9, 2009, [http://cornyn.senate.gov/public/index.cfm?FuseAction=ForPress.NewsReleases&ContentRecord\\_id=8ba23376-802a-23ad-4c7d-76e61d947a53&Region\\_id=&Issue\\_id=0d5fec9c-bbc1-4c0b-8b43-8aa2d26854d6](http://cornyn.senate.gov/public/index.cfm?FuseAction=ForPress.NewsReleases&ContentRecord_id=8ba23376-802a-23ad-4c7d-76e61d947a53&Region_id=&Issue_id=0d5fec9c-bbc1-4c0b-8b43-8aa2d26854d6).

<sup>55</sup> U.S. Congress, Senate Committee on the Judiciary, Subcommittee on Immigration, Refugees and Border Security, *Comprehensive Immigration Reform*, Opening Remarks, 111<sup>th</sup> Cong., 1<sup>st</sup> sess., April 30, 2009.

<sup>56</sup> Representative Lamar Smith, “Opposing view: Amnesty makes no sense,” *USA Today*, June 29, 2009.

<sup>57</sup> John McPhaul, “Immigration Reform Tough During Crisis, Biden Says,” *Reuters*, March 30, 2009.