



## **Still Room for Consensus:** A Statement by BPC's Immigration Task Force

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BIPARTISAN POLICY CENTER

# *Immigration Task Force*

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# Letter from the Co-Chairs

This report, *Still Room for Consensus*, reflects ideas and policy recommendations to reform our immigration system that we believe can gain bipartisan support. While the political landscape has changed, fundamental aspects of our broken immigration system must be addressed through federal legislation.

A critical issue facing the incoming administration is the status of the so-called DREAMers who have applied for protection under the Deferred Action for Childhood Arrivals (DACA) program. We agree that those who were brought to this country while they were children and have grown up in this country, are in school or the military, or are working productively, are deserving of some differential form of protection. President-elect Donald Trump acknowledged the unique situation for DREAMers, stating:

*“We’re going to work something out that’s going to make people happy and proud. . . They got brought here at a very young age, they’ve worked here, they’ve gone to school here. Some were good students. Some have wonderful jobs. And they’re in never-never land because they don’t know what’s going to happen.”*

To this end, we support the BRIDGE Act and similar bipartisan legislation introduced in Congress to provide temporary legislative protection to beneficiaries of the DACA program and other qualified DREAMers while Congress debates broader reforms to the broken immigration system.

The president-elect has also rightly indicated that our enforcement efforts should prioritize public safety focusing resources on criminal elements among the immigrant population. Our task force also agrees that the nation must improve border security and the enforcement of our immigration laws. We recognize that measurable progress toward these ends is required before Congress will return to a broader discussion that addresses the economic costs of our failing system and the status of undocumented residents.

We believe that there are effective and politically viable opportunities to balance our nation’s security and economic imperatives. We urge the incoming president and Congress to work quickly to address the priorities of the border and the DACA program, and look forward to working with President Trump and members of Congress in the coming year.



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*Former Governor of Mississippi*



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# *A Call for Bipartisan Consensus*

We, the members of the Bipartisan Policy Center's Immigration Task Force, believe that the president and Congress must act to address the many failings of the nation's broken immigration system. Over the course of the last two years, we have grappled with the range of deeply felt interests and concerns that exist among all those who are substantively working to fix America's broken immigration system. These recommendations are the product of rigorous study, aggressive debate, painful compromise, and our assessment of political viability. We understand that the White House or Congress may not move forward with a comprehensive approach that simultaneously addresses all the issues identified herein. However, we do believe that all of these issues must and can be addressed in a balanced and proportional way through multiple bills to strengthen the American economy, enhance our national security, and support the rule of law and basic fairness. It is important to note that none of us is entirely comfortable with each and every one of these recommendations, taken on their own.

Our system of legal immigration, both permanent and temporary, is woefully out of step with our economic and labor force needs, and is often unworkable for employers and immigrants alike. Those trying to navigate the system to reunite with their families are often kept waiting for many years outside the country. The shortcomings of our current legal system incentivize illegal immigration. Our enforcement processes on the border and in the interior continue to be shortsighted, unaccountable to consistent and objective metrics, and result in overemphasis on the U.S.-Mexico border as the locus of illegal migration. Lastly, and largely because of a broken structure, the country has a large community of individuals living without either the responsibilities or privileges of legal status. Today, these individuals are not living up to their economic potential and are costing the United States millions of dollars in law enforcement efforts. Because of their undocumented status, these individuals are also open to exploitation by those who capitalize on the shadow economy. As a nation, America can no longer afford to turn away and ignore the status quo: de facto amnesty exists today.

BPC's Immigration Task Force is a politically diverse group working toward bipartisan consensus on the key immigration reform issues. We believe that real and lasting immigration reform must come from legislation, passed by both the House and the Senate and signed by the president. While it is up to Congress to lay out a process for reform, we believe the legislation must include provisions that secure the border, control the flow of unauthorized immigration, provide adequate legal avenues for future workers, maintain a tradition of family-based immigration, and afford a means for those currently undocumented immigrants to get right with the law and earn a legal status. Our group believes the following set of principles represent commonsense, middle-ground positions that a majority of Americans can support and will help to move the immigration debate forward at this critical juncture.

## *Controlling Unauthorized Immigration*

Our national security depends on America's ability to enforce the integrity of its immigration laws. However, while we must control our borders to address future unauthorized immigration, border security is only part of the solution. Preventing unlawful entry needs to include not just enforcement between the ports of entry but also preventing fraudulent entry. Enforcement must also include prohibiting unauthorized work and addressing visa overstayers. These efforts are currently complicated by a large unauthorized population, who, as we discuss below, should be provided a way to earn legal status. But for those who arrive later, or who become unauthorized by overstaying or violating the terms of their visa, and have no lawful case for protection, we must identify and remove them to deter future unlawful immigration and overstays and to protect the integrity of our system. In conducting enforcement, however, we must also ensure that the system is balanced and fair, respecting due process and the civil rights of both Americans and immigrants. This includes recognizing the need for resources to address backlogs in our immigration court system and improving the representation of immigrants in proceedings.

### **Entry-Exit System.**

We will never control the immigration system without also addressing the problem of individuals overstaying their visas. Proposals for controlling unauthorized immigration need to reflect this reality. A fully biometric entry and exit tracking system should be the goal. As a first step, the Department of Homeland Security (DHS) should continue to invest in efforts to develop a full biographic exit system that includes biometrics wherever possible. Today, land borders present the biggest challenge to implementing comprehensive exit solutions. Land ports do not have existing exit infrastructure, are often in space-limited locations, and must deal with vehicle traffic without unduly delaying travelers or commercial traffic. Alternative concepts for collecting exit data must be explored and piloted, including additional data sharing with Canada and Mexico and requirements for visitors to use kiosks at locations in Mexico to self-report their exit. An accurate database to inform future visa, admission, and enforcement decisions will also serve as a deterrent in and of itself for overstays.

### **A trusted, independent entity is needed to develop and verify security metrics.**

The public deserves to know whether or not the U.S. border is secure and how effectively their tax dollars are being spent on immigration enforcement. Previous immigration reform legislation has provided additional border assets, such as more border personnel and technology. However, reforms have rarely provided outcome-based border security metrics that are trustworthy and verifiable, such as measuring the net inflow of illegal migrants or the percentage of individuals who overstay their visas. We believe the United States should establish a scientifically valid set of measures that are audited by an independent commission and published periodically for public scrutiny. Metrics should also reflect investment in enforcement and the return on that investment, and should be developed for all portions of the enforcement system—not just border security—since all aspects are linked in preventing and deterring unauthorized migration. This system would both provide a much-needed holistic picture of the flow of unauthorized immigration, ensure more efficient allocation of resources, highlight existing security vulnerabilities, and allow the public to hold accountable those responsible for securing the nation's borders.

## **Employment Verification and Employer Sanctions.**

Mandatory electronic employment verification has a significant role to play in deterring future unauthorized immigration. To be successful, the system should be mandatory and universal for all employers over time; have processes to quickly correct erroneous information; be easy to use for employers of all sizes, especially small businesses; and be accompanied by enforcement resources to monitor and ensure compliance by employers. Resources should also be developed to help employers, especially small businesses, meet compliance requirements, including excusing good faith compliance errors that have not resulted in harm to workers. To strengthen the integrity of identification documents for the purposes of employment, we should take steps to issue new smart, tamper-proof Social Security cards designed to prevent counterfeiting or duplication for fraudulent purposes.

Congress must also institute harsher penalties for businesses that purposely continue to hire or employ unauthorized immigrants after institution of the new system. On its own, employment verification could encourage some employers to hire more unauthorized immigrants under the table to avoid the system. Increased enforcement against these employers could ensure they use the legal immigration channels. Enforcement of employment requirements should also be accompanied by enforcement of labor and employment laws to ensure that employers do not use the employment verification system to coerce or deter employees from exercising their rights under law and protect all workers, American and immigrant, from abusive wage and employment practices.

## **State and Local Law Enforcement.**

A debate is raging in America about the proper roles of federal, state and local government in the enforcement of our immigration laws. While our task force members reflect this variety of positions, all firmly agree that federal, state, and local governments must work together to prevent violent criminal acts and protect national security.

Instances of criminal violence are shocking when committed by undocumented individuals who have been released from custody. These tragic situations underscore concern about the integrity of our laws. At the same time, broader enforcement of immigration law by state and local police has led to overaggressive actions that has hurt policing among immigrant communities and led to civil rights violations. Efforts to engage local jurisdictions in identifying and deporting dangerous criminals or threats to national security must be mindful of this history and take clear steps to prevent abuses.

To be clear, the principles of federalism and the Constitution do not allow the federal government to force local police to enforce federal immigration laws. The solution to this will require constructive dialogue among all levels of law enforcement to clearly delineate roles, responsibilities, and priorities. Any legislative reforms to our immigration system should foster better cooperation between local law enforcement and federal immigration officials to apprehend dangerous criminals and security threats, while ensuring community safety and upholding civil liberties.

## *Legalization and Citizenship*

In order for a new immigration system to function properly, we must appropriately deal with individuals living in the country without authorization. A bipartisan, pragmatic policy solution for the unauthorized population recognizes the reality of their presence and existing integration into our communities and economy. At the same time, the solution needs to uphold the rule of law and avoid providing individuals who have broken our immigration laws automatic or special paths to green cards or citizenship. An approach similar to probation in our criminal justice system would allow unauthorized immigrants to get right with the law by showing themselves to be productive members of society. Such a solution—combined with improvements to our immigration enforcement regime and changes to our legal immigration system—will benefit our economy, ensure the integrity of our system, and honor our legacy as a nation of immigrants.

### **Provisional status.**

A program should be created to provide a means for unauthorized immigrants to get right with the law and, after meeting an appropriate set of fair yet rigorous requirements, enter a probationary period during which they can earn legal status. Specifically, we suggest that individuals seeking probationary status: a) present themselves to authorities, admit to having entered unlawfully or overstayed their visa, and provide proof of identity; b) provide proof of continuous presence in the country to ensure the status is not made available to individuals who attempt unlawful entry in the future; c) pass appropriate criminal and national security background checks; d) pay a fine that is both proportional to their means and commensurate to their offense; and e) pay application fees that cover the cost of the program.

Applicants who meet these requirements would then be put on probation for an appropriate and specified period of time which would allow work authorization and travel. To maintain this status, individuals must show that they can be productive members of society by supporting themselves through continued employment, full-time enrollment in college or school, or by serving honorably in the military, or that they are otherwise supported by family members and not reliant on the government (for example, stay-at-home spouses and children). Reasonable flexibility and exceptions should be made for the elderly and those unable to work due to circumstances beyond their control. To maintain probationary status, they must also not engage in criminal activity, continue to pay required taxes and other obligations, and demonstrate that they are actively pursuing knowledge of English.

### **Undocumented immigrants should not be forced to choose between a green card and leaving the country at the end of their probationary period.**

Similarly, undocumented individuals who pay all penalties, pass a criminal background check, and fully comply with other requirements of a provisional status should not be denied the ability to eventually apply for a green card through the legal immigration channels. However, newly legalized immigrants should not be forced to apply for a green card, but rather should be allowed to stay and renew their interim status if they prefer or are not immediately eligible for another status. Otherwise, immigrants who have successfully met all requirements and maintained their probationary legal status can be deemed to have “completed their probation,” and can be considered eligible to apply for any legal status for which they would otherwise be

eligible, including nonimmigrant temporary worker programs or legal permanent residence.

### **Back of the line.**

No unauthorized immigrant should receive a special or automatic path to a green card before visas have become available for all who have applied through legal channels and are waiting in line, with the exception of individuals brought here as children. However, in order to ensure that these individuals do not remain in indefinite limbo, adjustments should be made to our current legal immigration system to accommodate those waiting for green cards and those aspiring to status. Additionally, Congress may want to consider accelerating the process for individuals who commit to and fulfill a period of continued service in the agricultural sector.

### **Citizenship.**

Citizenship is a patriotic choice that has never been automatic for any immigrant. Only those who truly want to be Americans should become Americans—this is our tradition. The requirements set in law to naturalize include a period of time in permanent resident status, physical presence within the United States, knowledge of English and American civics, and possession of good moral character, among others. Many immigrants to the United States choose never to apply for citizenship. Immigration reform should not devalue the citizenship process. Unauthorized immigrants should only be eligible to apply for citizenship if they have completed their probationary status and received a green card through the legal immigration system. At that point, individuals should be allowed to apply for citizenship if they choose to and are eligible.

## *Future Immigration*

Enforcement initiatives and a program to provide provisional status to the currently unauthorized should be implemented—and can only be effective—along with reforms to the legal immigration system for future immigrants that: a) encourage and incentivize immigrants to come legally rather than illegally; b) allow sufficient visas to meet legitimate labor needs; and c) allow families to reunite in reasonable time periods.

### **Robust temporary worker visa programs are essential to the U.S. economy.**

Increased economic immigration will grow the U.S. economy and is the best tool for preventing future unauthorized immigration. Employers need workers, and immigrants who face limited opportunities in their home countries want to come to work in the United States. Without a legal system in place that recognizes this reality, both employers and immigrants will continue to break the law. To protect American workers while serving the needs of the U.S. economy, employers must be required to pay wages that would not artificially lower the market, and caps for temporary worker programs should fluctuate and remain flexible depending on true labor needs. An administrative body in the executive branch should be responsible for routinely highlighting and verifying labor shortages, and new workers should be directed toward shortage occupations, while making sure that employers are paying legally required wages and recruiting U.S. workers. Regional diversity in labor shortages by relevant sectors also may demand more flexible quotas and new ways to assign them. While the federal government would still govern and oversee visa requirements, worker protections, and all other aspects of the temporary worker programs, a new “federalist” model for the allocation of nonimmigrant work visas could facilitate each state or region to have its own allocation according to their specific economic needs.

### **Worker exploitation is a significant problem with temporary worker programs.**

If employers are going to have access to more workers, they must be subject to stricter penalties for abusing or manipulating the temporary worker programs or exploiting guest workers. Cheating results in gaining a competitive advantage, and therefore all employers must abide by all applicable labor laws and regulations. A process that allows workers and employers to separately apply for a program could minimize opportunities for abuse, since the worker’s visa would not be dependent on the employer filing for them.

### **Visa portability, or a worker’s ability to change jobs, is a critical tool for protecting workers.**

Any new temporary worker program for non-agricultural workers should not bind a worker to a single employer, which can leave the worker open to exploitation and allow unscrupulous employers to undercut the market through substandard wages or working conditions. Ultimately, workers who follow the rules and set down roots in the United States should be able to petition to remain permanently. However, if a temporary worker is out of work for 60 days, that worker’s visa should no longer be valid, absent extenuating circumstances.

### **Access to temporary workers for small businesses.**

Many unauthorized immigrants work for small businesses that often struggle to comply with complex regulatory requirements for recruiting foreign workers. Temporary worker programs need to strike a careful balance between being simple enough for employers, particularly small businesses, to use and ensuring that employers do not exploit workers or displace American workers. Allowing small businesses to hire and recruit a limited number of temporary workers through a simplified procedure would cut down on bureaucracy for both the small-business employers and the worker, while ensuring that small businesses can secure the temporary workers they need through a lawful mechanism. In conjunction with allowing small-business employers simplified access to more workers, employers who continue to cheat the system by hiring workers illegally should be subject to stricter penalties for exploiting and hiring unauthorized workers.

### **Temporary workers should not be prohibited from having the option to permanently migrate.**

Today, temporary worker visas are distinct from permanent immigration options under law and many temporary workers are prohibited from establishing “dual intent” to seek permanent residence if they choose to and are eligible. However, such firm separations between temporary workers and green cards do not conform to reality: most employment-based green cards each year are already issued to persons living in the country on some temporary status—this is particularly true of employment-based green cards, 90 percent of which are issued to temporary immigrants living and working in the United States. While not all temporary workers want to permanently stay in the United States and instead choose to come and go, our legal system should provide for a more streamlined and efficient process that recognizes this continuum and provides immigrant workers who prove their ability and desire to work and support themselves and their families a way to apply for permanent residence through the established legal channels in the future, if qualified.

### **There is a strong case for increasing employment-based immigration while maintaining a tradition of family-based immigration.**

Only about 14 percent of all green cards go to employment-based legal permanent residents, a majority of which are usually taken up by the family members of the principal workers. Compared to other OECD countries, the United States ranks very low in employment-based immigration. The green card system should increase the entry of immigrants based on economic factors both to meet legitimate labor and economic needs, but also to help improve the likelihood of their success in the United States. Economy-based immigrants should include workers needed in the economy at all skill levels, especially high-skilled workers in STEM as well as entrepreneurs and investors. Visas for economic immigrants will grow the U.S. economy and strengthen the nation. However, this increase should not take place at the expense of family and immediate-relative immigration, which are a rich American tradition.

## *Economic Impacts*

The U.S. economy is continuing to recover from the most severe recession in decades. Under the pressures of a slow recovery and changing demographics, the U.S. workforce has struggled to return to its previous size and participation rates. Moving forward, effective immigration reform can be a powerful instrument of economic revitalization. Immigrants are generally younger than the native population and help sustain healthy population growth, keeping the American labor force large and growing. A growing labor force and overall healthy population growth can help expand the economy, contribute to higher overall average wages, generate more consumer spending, and spur new demand for residential housing construction. By supporting stronger economic growth, immigration reform can also reduce the federal budget deficit substantially and generate more jobs in the economy.

### **Immigration is the number one contributor to sustaining healthy and productive population growth.**

Many of today's developed countries have populations that are either stagnant or shrinking while their percentage of seniors is growing. Population stagnation reduces the supply of younger people entering the workforce, which threatens the ability of these countries to maintain the size of their labor force, promote economic growth, and encourage consumer demand. Especially at risk are social insurance and retirement systems, which rely on young workers to support retirees, including the U.S. Social Security and Medicare programs. In the United States, immigration can be the foundation upon which our aging population is supported and an important means of improving the long-term U.S. budget and fiscal outlook. Most immigrants to the United States are younger than the native-born population. In fact, 95 percent of immigrants are younger than 65 at the time they enter the country. Projections show that without immigration, the U.S. population would age 30 percent faster over the next 50 years and stop growing by mid-century.

### **Immigration reform will benefit the U.S. economy in many ways.**

Previous research has illustrated that balanced immigration reform, whether comprehensive or piecemeal, has significant potential to improve the country's economic and fiscal outlook. A strong and legal flow of immigrants will grow the U.S. housing sector, increase tax revenues, support entitlement programs, and increase innovation and entrepreneurship. A previous BPC study found that comprehensive immigration reform could boost economic growth 4.7 percent (as measured by growth domestic product, or GDP) and reduce cumulative federal deficits by \$1.2 trillion over the next 20 years. Immigration reform could also dramatically increase demand for housing units, raising residential construction spending by an average of \$68 billion per year.

A subsequent study on piecemeal reform scenarios found that sequential legislative approaches could fix the nation's broken immigration system and have powerful economic benefit. Legislative efforts that balance increased enforcement with reforms that address the unauthorized immigrant population, expand temporary worker programs, and increase high-skill immigration could significantly increase GDP growth and reduce cumulative federal deficits by \$570 billion.

The results of these and many other studies reveal that there are numerous paths to effective reform. However, in all cases, the

key to future prosperity is a system that combines increases in enforcement with measures that can maintain and grow the labor force. Enforcement-only approaches to our immigration system would significantly lower GDP and increase our national debt. Combining enforcement with other policies that reform our legal immigration system can achieve the best of both worlds.

## *Conclusion*

America's ability to attract immigrants helped the United States become history's greatest mobilizer of human potential. Moving forward, immigration will remain critical to economic prosperity and integral to our national security. The nations that most effectively harness the energies of youthful, productive, and creative workers will emerge as the world's most powerful and influential states. Facing significant demographic challenges, it is as important as ever that the United States craft a sound, forward-looking immigration system that serves the national interest. The BPC Immigration Task Force remains committed to finding common ground and achieving this goal.

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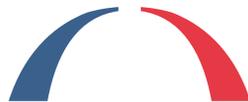
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