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FOCUSING ON THE SOLUTIONS

Earned Legalization: Repairing our Broken Immigration System

*In “Breaking Down the Problems, What’s Wrong with Our Immigration System?” the Immigration Policy Center laid out key structural problems **WITHIN** immigration law, as well as the inadequate, enforcement-only responses that have given rise to our current immigration crisis. Genuine immigration reform requires a thoughtful, coordinated approach that restores balance to the process, giving America the tools it needs to remain a leader in a rapidly changing world.*

We can expect every major piece of comprehensive reform legislation to tackle the issue of creating a legal status for the 11- 12 million undocumented immigrants residing in the United States. Ultimately, most politicians and policy makers agree that practically, the U.S. cannot deport this population, and some kind of process for legalizing status is necessary. However, there remains a temptation to create high penalties in exchange for a green card because many politicians want to ensure that people have paid the price for coming to the country illegally. An overly punitive process, however, ultimately defeats the purpose of a legalization program because it will deter people from participating and potentially drive people further underground. A successful legalization program combines measured penalties with clear and achievable goals that will get the maximum number of people into the system, identify the relatively few who do not belong here based on criminal activity, and integrate those who can contribute their talents as quickly as possible.

Legalization, when accompanied by comprehensive immigration reform, is beneficial to the nation. Taking care to get legalization right will pay off in a host of ways. If done correctly, legalization offers the following benefits:

- It is part of the solution to ending illegal immigration as we know it, which allows federal, state, and local governments to focus scarce resources on other issues.
- It benefits the economy by transforming undocumented immigrants into legal workers, thereby leveling the playing field for all U.S. workers and employers.
- It is critical to fully integrating immigrants into our communities.
- It enables legalized workers to better invest in their education and future and become professionals, homeowners, taxpayers, consumers, and entrepreneurs.
- It promotes national security and public safety by allowing DHS and the police to focus resources on threats to U.S. communities’ safety and security.

The following key principles should be considered when devising a structure:

- **Cover the maximum number of people possible.** Covering as many of the 12 million undocumented immigrants as possible makes sense from a humanitarian perspective; it also makes sense from a good government perspective. If one of the objectives of legalization is to minimize illegal immigration, any program that leaves a sizeable undocumented population in the U.S. will fail. Step one toward broad legalization is setting the eligibility cut off date (the date by which the qualifying immigrant had to have been in the U.S.) as close to the date of enactment as possible so the majority of the current undocumented population will be eligible.
- **Create a simple and straightforward process that measures prospective, rather than retrospective, eligibility.** A straightforward registration program without overly onerous, politically motivated initial requirements will maximize the likelihood of success. Once a law has been enacted, the priority is moving quickly, getting people into the system, and minimizing fraud. Creating overly burdensome documentation requirements will require more time to gather, review, and adjudicate. Similarly, attempting to make people pay huge fines or criminal penalties up front will only slow down the process. Basic proof of identity and a criminal background check should be enough to bring an applicant into the system, with more rigorous requirements tied to later stages in the program.
- **Make the program about integration into the community and a commitment to becoming a lawful permanent resident.** Upon registration, applicants should be on a path that leads to a green card, provided they meet specified criteria. The criteria that most seem to measure commitment—paying taxes, learning English, working hard or going to school, staying out of trouble—can be built into the requirements for successful completion of the program, but the trade off must be legal status that can eventually lead to citizenship. Without the promise of a green card, legalization is nothing more than an expanded temporary worker program, running the risk of creating a second-class citizen with the right to work, but with no incentives to put down roots and no opportunity to remain lawfully. Newly legalized immigrants must not be granted a distinctive status that singles them out from other legal immigrants, inviting discrimination and abuse.
- **Minimize the impulse to punish people.** There is likely to be considerable political pressure to impose high fines, require people to leave the country before applying, limit the ability to bring in immediate family, or complete other requirements in exchange for legal status. While these measures sound tough, they are counterproductive. In order to achieve the broadest possible legalization, the eligibility criteria and evidentiary standards must be achievable by a maximum number of people. History has shown that these types of harsh measures will not shield proposals from charges of “amnesty.” Nothing is gained, but much can be lost, if we succumb to the belief that a punitive legalization process will change the underlying issues.
- **Coordinate with the groups with close ties to immigrant communities.** In order to be successful, the government will need to partner with community-based organizations who know immigrant communities best. These groups will be critical to outreach, education, and application preparation and must receive funding in order to increase their capacity to implement legalization. It will be critical to inform the immigrant community about the program, eligibility standards, and application requirements. Outreach and education must be

done in partnership with community-based organizations and must be done in multiple languages.

- **Make fees and fines count.** Although USCIS is fee-funded, implementing a large legalization program will require an up-front investment in the agency prior to the first applications being filed. Congress must also balance the need for funding the program with the desire to keep costs reasonable to ensure maximum participation. While application processing fees and monetary penalties are certain to be included, it is important to develop an affordable cost structure that encourages individuals to come forward rather than deterring participation. In many past proposals, applicants have been able to pay any fines in increments and those monies have been used, in part, to help support state and local initiatives that help people meet their eligibility requirements. Thinking carefully about how to structure any payments requires working with affected communities and the government to maximize the use of limited financial resources.
- **Don't create Catch-22s.** In order to achieve the broad goals of legalization and ensure that the maximum number of people will be legalized, it is important that immigrants not be ineligible because they are undocumented. For example, many unauthorized immigrants have used false documents and worked without authorization. Violation of the law for the purpose of remaining in the U.S. illegally cannot make an individual ineligible for legalization. Applicants for legalization must not fear that coming forward will result in their deportation or any other penalty. Applicants must feel confident that evidence provided as part of the legalization program will not be used for immigration enforcement purposes, except in the case of egregious violations of the law. Any potential negative consequences of applying for legalization must be made clear through community outreach and education.
- **Building upon existing laws and proposals that make sense.** A legalization program does not have to be built from scratch. Many of the basic components can be found in legislation introduced over the last decade. Other more specialized programs, such as AgJobs and the DREAM Act, are popular legislative proposals that can address the needs of special communities.