



CONSTITUTIONAL ACTION REPORT

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Questions and Answers on Immigration Reform

President Obama has chosen to make “Comprehensive Immigration Reform” the number one issue of 2013. In fact, he has said that if Congress moves too slowly to suit his schedule, “I will send up a bill based on my proposal and insist that they vote on it right away”¹, as if the separation of powers had been removed from our Constitution. This edition of Constitutional Action Report therefore focuses on some of the key questions that must be clearly answered and understood if a well-informed choice is to be made by the American people and their elected representatives.

Is the border with Mexico now secure?

If one believes the Obama administration, the answer would have to be yes.

According to President Obama, during his first term he “strengthened security at the borders so that we could finally stem the tide of illegal immigrants. We put more boots on the ground on the southern border than at any time in our history. And today, illegal crossings are down nearly 80 percent from their peak in 2000.”²

Secretary of Homeland Security Janet Napolitano recognizes that only a few years ago there was “a flood of illegal immigration” across our southern border, but she assured a Senate Committee “That situation no longer exists.”³ Napolitano put great emphasis on two points. First, the number of illegal immigrants being caught at the border has decreased in recent years. Second, a great deal of money has been spent in an effort to strengthen border security.⁴ So much has been accomplished, she believes, that now “passage of the President’s reform principles is the single best step we can take to enhance border security.”⁵

Similarly optimistic statements regarding tightened control over the border with Mexico come from the leaders of the Border Patrol. They told Congress that “the border is more secure than ever before”, and that “apprehension activity remained at historic lows”.⁶ They also emphasized the increased resources being devoted to the Mexican border.

The question, however, is whether the additional spending on manpower and equipment has genuinely improved the effectiveness of the Border Patrol to a degree that would allow a reasonable and objective person to say that the border with Mexico can now be described as “secure”.

The Obama administration argues that border security is demonstrated by fewer arrests of people trying to cross the border, and other evidence that fewer border crossings are now being attempted. This

¹ Obama, Barack, *Remarks by the President on Comprehensive Immigration Reform*, January 29, 2013 at Del Sol High School in Las Vegas, Nevada.

² *Remarks by the President on Comprehensive Immigration Reform*

³ *Written Testimony of U.S. Department of Homeland Security Secretary Janet Napolitano for a Senate Committee on the Judiciary hearing titled “Comprehensive Immigration Reform”*, February 13, 2013.

⁴ *Napolitano Testimony, February 13, 2013*

⁵ *Napolitano Testimony, February 13, 2013*

⁶ *Written Testimony of U.S. Customs and Border Protection U.S. Border Patrol Chief Michael Fisher and Office of Field Operations Acting Assistant Commissioner Kevin McAleenan for a House Committee on Homeland Security, Subcommittee on Border and Maritime Security hearing titled “What Does a Secure Border Look Like?”*, February 26, 2013.

argument ignores the fact that the sharp decline coincided with the recession, and that the lack of jobs discouraged illegal immigration. Furthermore, the government's own figures show that border crossings not related to employment have not declined, and appear to be increasing. This is inconsistent with tighter border control, but thoroughly consistent with the effects of the recession.

The Government Accountability Office (GAO), in last year's study of border security, noted that the Border Patrol acknowledged the recession as a cause of fewer crossing attempts (in fact, it was at the top of the list).¹⁴ The Pew Hispanic Trust, in their April 23, 2012 report, found that 1.4 million Mexicans had returned to Mexico from the United States between 2005 and 2010, and attributed this partly to "weakened U.S. job and housing construction markets". The Pew Center drew the logical conclusion that "It is possible that the Mexican immigration wave will resume as the U.S. economy recovers."¹⁵

Is the border so secure that a new "immigration wave" could be turned back, with few making it into the U.S.? The available evidence is far from encouraging.

This is what the GAO had to say last year. "Border Patrol reported that across the nearly 2,000 southwest border miles, resources were in place to apprehend activity at the immediate border for 129 southwest border miles, or at some distance from the border for an additional 744 southwest border miles. . . . Border Patrol reported that for nearly two-thirds of the remaining 1,120 southwest border miles, resources were in place to achieve a high probability to detect illegal activity, but the ability to respond may be compromised by insufficient resources or inaccessible terrain".¹⁶ Putting it more plainly, the Border Patrol is saying that about 6% of the border (129 miles) might be considered truly secure. For another 38% (744 miles), the Border Patrol hopes to be able to capture illegal aliens "at some distance from the border" after they have been allowed to enter the U.S. The remaining 56% (1,120 miles) of the border is not secure at all.

However, there is doubt even concerning the 44% for which the Border Patrol claims some degree of security. The GAO reports that over the past five years, the number of drug seizures at the border has increased by 81%.¹⁷ This must indicate a large increase in drug smuggling, if the decline in arrests of illegal aliens likewise demonstrates a decline in successful crossings there (as Obama and his appointees claim). If drug smugglers can get across the border, there can be little doubt that those seeking jobs will be able to do the same once the jobs again become available.

The GAO also found that apprehensions of possible terrorists had increased, which casts even more doubt on the claim that fewer apprehensions of employment seekers proves that the border is now secure.¹⁸

There is also important anecdotal evidence. The GAO, rather than rely entirely on the Border Patrol's own claims, interviewed some Arizona residents living near the border. These people said that there had been some decline in illegal immigrants crossing their land, but no decline in drug smuggling.¹⁹

There is even reason to believe that the possibility of amnesty is already causing an increase in border crossings so that they can qualify for amnesty. Leaks from within the Border Patrol indicate that the number of crossings is up in 2013. A story in the *Washington Post* confirmed that northern Mexico was filled with people preparing to attempt the crossing.²⁰

Will amnesty for illegal aliens be greatly delayed under the procedures being discussed for Comprehensive Immigration Reform?

Amnesty would be immediate, but this is often not understood because of confusion over terms.

¹⁴ *Border Patrol: Key Elements of New Strategic Plan Not Yet in Place to Inform Border Security Status and Resource Needs*, Government Accountability Office, December, 2012, pg. 11.

¹⁵ *Net Migration From Mexico Falls to Zero – and Perhaps Less*, Pew Hispanic Trust, April 23, 2012, pg. 6 and 8.

¹⁶ *Key Elements*, pg. 10.

¹⁷ *Key Elements*, pg. 18.

¹⁸ *Key Elements*, pg. 21.

¹⁹ *Key Elements*, pg. 16.

²⁰ "New Urgency to Cross Along Tougher U.S. Border", *The Washington Post*, Feb. 10, 2013, pg. 1.

Amnesty, in the case of illegal aliens, is defined as giving them legal residence in the United States, as if they had come here legally. This is not the same as a “path to citizenship”, which would come after amnesty has been granted. Although the right to apply for citizenship might be delayed by the terms of an immigration reform bill, all the proposals being discussed would grant amnesty immediately.

In other words, if an amnesty bill passes, most illegal aliens would immediately be forgiven for the crime of illegal entry and would be allowed to live and work in the United States. As far as residence is concerned, it would be as if they had obeyed the law and come to the U.S. legally. Since the majority of illegal aliens have indicated no interest in citizenship, but very much want to stay and work here, they would get what they want without any delay.

Do illegal immigrants deserve legal residence and a path to citizenship?

On January 29, 2013 President Obama said “Yes, they broke the rules. They crossed the border illegally. Maybe they overstayed their visas. Those are facts. Nobody disputes them. But these 11 million men and women are now here. . . . They're woven into the fabric of our lives.”²¹ The President, Senator Rubio, and many others believe that because illegal aliens were successful in breaking the law, and successful in evading arrest and punishment, they deserve to be treated much the same as someone who entered the United States illegally.

However, the United States claims to operate under the rule of law, and amnesty would make a mockery of this. It would reward those who successfully broke the law, and punish those who obeyed the law and waited their turn. It would tell everyone who hopes to immigrate that the smart move is to come right away, illegally, rather than waiting your turn under the procedures established by U.S. law.

The DREAM Act is sometimes put forth as a more moderate version of the argument, saying that those who were brought here illegally by their parents should not be blamed, and should be allowed to stay. This is comparable to saying that if an illegal alien steals a car and gives it to his teenage child, the child should be allowed to keep the car since he did not steal it himself. Respect for the law requires that all be held accountable to the law.

Are illegal immigrants a great economic benefit?

Many illegal immigrants hold jobs, and therefore it appears superficially plausible that they are adding to the economic productivity of the United States. However, this overlooks two important points. First most illegal immigrants have little education, and therefore hold low-income jobs that put them within the income range for various forms of welfare. An examination of the 2010 census by the Center for Immigration Studies found that 57% of immigrant families (i.e including even the better-educated legal immigrants) had received some form of welfare assistance during the previous year. The figure was 80% among immigrants without a high school education. It was 55% for those families that had been in the United States for at least a decade, indicating that illegal immigrants do not have the education and skills needed to rise into the middle class, but continue to be a welfare drain on the taxpayer.²² When the extra cost of the taxes needed to finance this welfare are taken into account, it becomes obvious that this “cheap labor” is not so cheap after all. It is merely taxpayer-subsidized labor, allowing it to be cheap for the employer.

A second important factor is that at least some of the jobs held by illegal immigrants would otherwise be filled by American citizens, who instead end up collecting unemployment and other welfare benefits. These Americans, if better-educated than the illegal immigrants, might actually be more productive workers, and would have a better chance of moving up to more middle-class jobs over time. To the extent that it is genuinely impossible to fill certain jobs, a well-monitored program of temporary or permanent visas could be allowed to

²¹ *Remarks by the President on Comprehensive Immigration Reform*

²² Camarota, Steven A., *Welfare Use by Immigrant Households with Children* (April 2011), Center for Immigration Studies, found at <http://cis.org/immigrant-welfare-use-2011> .

fill these positions. Under no circumstances should the current policy of ignoring the violation of immigration laws be continued.

Does amnesty for illegal aliens have strong support from the American public?

A poll conducted by Pulse Opinion Research in late January found that 52% of Americans favor sending illegal immigrants back to their home countries, while only 33% wanted them to be given legal status to remain here. Republicans supported this position by 71-14%, and blacks by 55-28%. Even 38% of Democrats supported deportation.²⁴

Furthermore, among those favoring deportation, 73% felt very strongly about the matter, while only 37% of amnesty supporters had very strong feelings.

A poll conducted for the Pew Hispanic Center found that 49% of Hispanics believed that improved border security and stronger enforcement of the immigration laws was as important as providing legal status to those already here, demonstrating that Hispanic voters are by no means supportive of further illegal immigration.²⁵

What is the Congressional schedule for dealing with the question of amnesty for illegal immigrants?

One or more bills are likely to be introduced in April, possibly by the time this reaches you. One may come from a “bipartisan” group of eight senators (Sens. Schumer, Durbin, Bennet, Menendez, McCain, Rubio, Graham, and Flake). A competing bill may be introduced on behalf of President Obama. The House of Representatives will probably take no action until the Senate has voted on a bill, though a “bipartisan” amnesty bill is also being drafted there.

The Senate Judiciary Committee will take up the matter in April, and supporters are expected to ask for quick action with no hearings, proceeding directly to mark-up (i.e. discussing and amending the bill). Their goal will be to bring the bill to the Senate floor before the American public has time to learn exactly what is in the bill. Amnesty is expected to be approved by the committee, but the vote on the Senate floor is likely to be very close, with many Republicans and a few Democrats voting to uphold a filibuster.

The Conservative Caucus Foundation will be following this issue closely, and expects to prepare an analysis of the legislation taken up in Congress.

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24 Camarota, Steven A., *Americans Prefer Illegal Immigrants Head Home* (February 2013), Center for Immigration Studies, found at <http://cis.org/americans-prefer-illegal-immigrants-head-home-results-of-national-survey>.

25 *If No Deal Is Struck, Four-in-Ten Say Let Sequester Happen*, Pew Research Center, February 21, 2013, pg. 11.