



# AILA Advocacy

AMERICAN IMMIGRATION  
LAWYERS ASSOCIATION

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# What to Watch Out for on *Immigration* in 2011

**F**or years, Americans and our elected leaders have been in agreement that the immigration system is outdated and failing to meet our country's needs. Every American business, community, and family is affected by the shortcomings of this system, which regulates the flow of foreign workers, students, and family members to our country. Each year that policymakers fail to recast these laws is another year that families cannot reunite with their loved ones, that businesses cannot hire the workers they need, and that people enter the United States unlawfully because there is no viable system for them to enter lawfully. Moreover the U.S. Government misses billions of dollars in potential tax revenue each year. Our economy and our communities are worse off. People are growing frustrated that Congress and the President have not fixed this intractable problem.

In 2010, the American Immigration Lawyers Association (AILA) published *Solutions That Work: A Policy Manual for Immigration Reform*, which describes the shortcomings of our immigration system and the solutions needed to fix it. As a companion piece, "What to Watch Out for on Immigration in 2011" describes proposals AILA anticipates will be made in the 112th Congress. Many of these proposals may sound appealing—as easy fixes or ways to get tough on illegal immigration—but they would do little to address America's immigration needs. What's worse, in most cases they would cause great suffering to immigrants and their families, add unnecessary costs to the DHS budget, or slow our economic recovery at a time when we desperately need job growth.



[www.aila.org/solutions](http://www.aila.org/solutions)

## KEY TOPICS:

- 1 ➤ Emphasis on Border and Interior Enforcement
- 2 ➤ Mandatory Employment Verification
- 3 ➤ Restrictions on State-Issued Identification Cards—the REAL ID Act
- 4 ➤ State and Local Authority to Enforce Immigration Law
- 5 ➤ Punitive Enforcement Approaches
- 6 ➤ Limits on the Opportunity for a Fair Hearing and Due Process
- 7 ➤ Attacks on the 14<sup>th</sup> Amendment
- 8 ➤ Restrictions on Legal Immigration That Hurt Families
- 9 ➤ Restrictions on Immigrants' Access to Public Services and Benefits
- 10 ➤ English-Only Proposals

## 1 ► Emphasis on Border and Interior Enforcement

The new leadership in the House of Representatives has made clear that its agenda will have a far greater emphasis on border security and interior enforcement. In particular, border security has been a constant drumbeat. Spending for more fencing, surveillance technologies, and boots on the border has increased steadily, including a \$600 million supplemental border spending bill that was enacted last year. In 2011, look out for even greater increases to border spending in appropriations bills and other proposals to tighten the border.

AILA recognizes the importance of ensuring national and border security as well as public safety. But AILA also urges caution and careful examination of enforcement proposals that may sound tough but ultimately will neither be effective, nor fix our immigration system, nor help the economy grow. Heaping on more money for border security without legalizing the undocumented or addressing our nation's immigration needs is not a smart approach. Moreover, tough-sounding enforcement proposals, like a mass deportation approach or the

border fence, are extremely costly and impractical to implement. Finally, they cause a great deal of suffering to people who are members of our communities, including U.S. citizens, without necessarily advancing U.S. policy interests. Enforcement should be done in a smart and effective manner that ensures public safety while also protecting American values of fairness and justice.

Early signs from the 112th Congress lead AILA to expect that lawmakers also will propose new restrictions on legal immigration or limits on immigrants' access to basic services. These restrictive approaches are based on the premise of protecting jobs and services for American workers. But such proposals are not usually supported by sound policy or evidence with respect to the impact immigrants have on the economy, jobs or public services. For these reasons, such restrictions would not necessarily improve overall economic conditions. Moreover, given the overwhelming evidence that immigrants create jobs and help bolster our economy, it is likely that restricting legal immigration and the services immigrants receive will actually hurt the economy.

## 2 ► Mandatory Employment Verification

In 2011, there will likely be proposals to make the existing electronic employment verification system, called E-Verify, mandatory for all employers. E-Verify is an internet-based system that allows an employer to determine whether an employee is legally authorized to work in the United States. The E-Verify system is operated by the Department of Homeland Security (DHS) in partnership with the Social Security Administration.

While a functioning and efficient employment verification system is necessary to ensure workers have authorization to work, the current E-Verify system suffers from serious privacy, civil liberties, budgetary and technological concerns. Most legislative proposals to expand E-Verify fail to address these flaws. Until these problems are resolved, any mandatory, nationwide implementation of

E-Verify could harm hundreds of thousands of people eligible to work, including U.S. citizens.

- E-Verify relies upon databases that contain unacceptably high percentages of outdated or inaccurate information. These errors can prevent U.S. citizens and work-authorized immigrants from securing employment. Based on DHS data, if E-Verify were to be made mandatory nationwide, at least 1.2 million authorized workers would lose their jobs if they do not take steps to correct their records. Because an error in a database has the severe consequence of preventing someone from being able to work, these issues with the E-Verify program must be addressed before any significant expansion of the program.

- At a time when our unemployment rates are high, we need to strengthen workers' access to jobs and employers' access to workers, not impose additional roadblocks that hinder economic growth.
- According to a 2010 Social Security Administration Inspector General report, improper use of the program (running through E-Verify those whose information should not have been submitted) occurs with alarming frequency at SSA, the agency that partners with DHS to operate the program. In 2008 and 2009, SSA failed to use E-Verify on 19 percent of its own hires when everyone should have been screened. Of the 81 percent who were screened, the report indicated that 49 percent were not verified in a timely manner.
- E-Verify can also be misused by employers who

might use it to prescreen potential employees, take an adverse employment action based on an initial response from E-Verify, or fail to inform workers of their rights under the program. A government-sponsored study, for example, found that database errors led 22 percent of employers to restrict work assignments, 16 percent to delay job training, and 2 percent to reduce pay—all in violation of the E-Verify program.

An inaccurate verification system makes it difficult for employers to hire authorized workers and citizens, harming our economy when we can least afford it. Rather than expand—or worse, make mandatory—a program that remains deeply flawed and not ready for mass use, SSA should work with Congress to create a smart and effective system in which the needs of businesses and the economy are met and workers' rights are protected.

### 3 ► Restrictions on State Identification Cards (REAL ID)

In the 112th Congress, there will likely be continuing conflicts over the implementation of the REAL ID Act, enacted in the wake of the 9/11 terrorist attacks that drew greater scrutiny to state driver licenses and identification cards. REAL ID Act established a mandatory federal standard for all state-issued drivers' licenses. When first enacted, REAL ID was to be implemented in 2008, but implementation has been delayed until May 10, 2011 due to the challenges states have experienced. The REAL ID Act seeks to bar all states from issuing driver's licenses to people who cannot prove they are in the U.S. legally by creating minimum issuance standards for such documents. The law does allow states some authority to issue driver's certificates or ID cards to undocumented immigrants if they choose to do so.

The REAL ID Act has faced ongoing criticisms from state governments and technical experts, including concerns that states must bear the high costs of creating a new driver license system. REAL ID mandates significant

changes to the amount and type of sensitive, personally identifiable information states will obtain, store, and share about each and every applicant for a driver license or ID card. These mandates could facilitate identity theft and invasions of personal privacy. Another concern with a restrictive driver license or identification card is that many undocumented immigrants will find it difficult if not impossible to obtain the cards. Having such a large population continue living in the shadows makes everyone in the community less safe. Driver license restrictions lead immigrants to fear being reported to DHS, and as a result avoid contact and cooperation with law enforcement in fighting potential criminal activity. Finally, privacy experts are concerned that REAL ID Act creates a de facto national identity card system for the first time in the United States that could undermine the civil liberties of all Americans.

As an alternative to the much-criticized REAL ID Act, Senators Akaka (D-HI) and Voinovich (R-OH) introduced the Providing for Additional Security

in States' Identification Act (PASS ID Act) in 2009. Designed to address the privacy concerns in REAL ID, PASS ID made a significant change by not requiring states to provide all other states with electronic access to their state transportation database. In addition, PASS ID repeals portions of the REAL ID Act which set strict requirements for driver licenses and personal ID cards. In other respects, however, PASS ID is more stringent.

For example, under PASS ID, applicants for asylum and temporary protected status (TPS) and persons granted TPS can only get a license if they have been granted work authorization. By contrast REAL ID made these groups eligible for licenses without being granted work authorization. One concern with PASS ID is that it gives the DHS Secretary the power to deny licenses to certain populations without any opportunity for review.

## 4 ► State and Local Authority to Enforce Immigration Law

Since the passage of Arizona's SB 1070 law, few issues have been more controversial than the question of what role state and local law enforcement should play in the enforcement of federal immigration laws. Traditionally, immigration has been viewed as an area of exclusive federal jurisdiction because it affects national and homeland security, border security, and foreign relations. The laws governing these issues work far better if established at a national level rather than a state or local level. If states and localities can also enact their own border laws or immigration laws, there would be numerous, conflicting laws that would make implementation impractical, if not impossible.

For these reasons, AILA believes that immigration law should remain a federal matter and disfavors the use of local and state legislation to regulate immigration. Nonetheless, every year states and local governments pass hundreds of laws related to immigration policy not only in the arena of law enforcement but in housing, public benefits, employment, identification cards and licenses, education, and public health.

### **Are States and Localities Preempted From Legislating on Immigration?**

Several state and local immigration laws have been struck down because they intrude into the federal government's exclusive power to regulate immigration. In July 2010, a federal judge ruled that major elements of SB 1070 were preempted by federal law. Arizona has appealed the decision. In September, a federal appellate

court struck down as unconstitutional a law enacted four years ago by the city of Hazelton, PA that would have punished landlords and employers who rent to or hire "illegal aliens." The court found the Hazelton law violated the Constitution's Supremacy Clause. Finally, in December, the U.S. Supreme Court heard argument regarding another Arizona law that regulates employment verification. A decision is expected in that case by summer 2011.

With these ongoing challenges to state and local laws, some federal lawmakers have proposed bills that give clearer authority to states and localities on immigration matters. Bills like the CLEAR Act, first introduced in 2003, would grant states and localities broad authority to enforce immigration laws and, in some cases, mandate that state and local police enforce federal laws.

- A major concern with local law enforcement agencies enforcing civil immigration laws is the chill it will put on immigrant communities to report crimes. When immigrants learn that contact with local law enforcement could lead to their own deportation or the deportation of close relatives, they become afraid of the police. When they do not report crimes, crimes go unsolved and community safety is compromised.
- Many state and local police leaders have opposed local enforcement of immigration laws. Police chiefs recognize the enormous benefit that "community policing" has had on reducing

crime rates. They see their number one job as fighting crime and protecting the community, and know that becoming “deportation agents” will hurt their ability to protect the public.

- Local and state law enforcement should not be tasked with enforcing federal immigration law when they do not have the resources or the training needed to properly undertake this role. At a time of severe budget crises when local police departments are laying off staff, adding more enforcement responsibilities will overwhelm many local agencies.

### **Federal Programs That Utilize Local Law Enforcement**

There are several federal immigration enforcement programs that rely on state and local law enforcement agencies to arrest, detain, and provide information about possible immigration law violators to DHS. These programs include the federal “287(g)” program (named after their federal immigration code cite), Secure Communities, the Criminal Alien Program, and

DHS’s extensive reliance on state and local authorities to hold immigrants on “detainers.” The 287(g) program authorizes states and localities to enter into specific cooperative agreements with the federal government, and empower their police officers to engage in certain civil immigration enforcement activities. The Secure Communities program provides federal immigration authorities access to fingerprints taken by a local police department at time of booking so that they can be run through federal immigration databases to check immigration status.

A leading concern with these federal programs is that they erode the trust between immigrant communities and local law enforcement agencies and ultimately compromise their ability to keep our communities safe. AILA is also concerned that programs like Secure Communities will function like a dragnet and result in the arrest and harassment of large numbers of people who are law-abiding members of the community. In 2011, we are likely to see a push to expand these enforcement programs, even though many questions remain about their effectiveness and impact on our communities.

## **5 ► Punitive Enforcement Approaches**

In the 112<sup>th</sup> Congress, there will likely be proposals to add stiff new penalties against individuals who violate immigration laws. Past proposals have called for dramatic ramp-ups of enforcement efforts, including mass deportations; making it a crime to be in the United States without authorization; mandatory deportation for lawful permanent residents who commit even minor crimes; expedited deportation for tourists and other visitors who stay in the United States after their visa expires; and severe punishments for people who use a fake passport or visa (something many asylum seekers resort to because it is the only way they were able to escape persecution). Another get-tough approach is one that aims to “expedite” legal proceedings by taking away people’s right to a fair hearing. There should be consequences for violating immigration law, and the current system

already addresses many of the issues described above. But these kinds of “get-tough” measures tend to be so punitive that they are disproportionate to the offending behavior. They are also costly and frequently impractical to implement.

### **What’s Wrong With “Enforcement-First”?**

Increased border security and interior enforcement are essential components of smart immigration reform. But enforcement will not be effective unless Congress also addresses the problems with an immigration system that is not meeting the needs of American families, businesses, and the economy.

The Bush and Obama administrations have aggressively enforced immigration laws, and in fiscal year 2010 the Department of Homeland Security logged a

record-breaking 392,000 deportations. Moreover, in August 2010 a major border and interior enforcement package was enacted. The Emergency Border Security Supplemental Appropriations Act was a \$600 million enforcement package, added funding for more border agents and interior enforcement officers, surveillance technology, and other infrastructure to fortify the border and interior.

Many who favor tough immigration enforcement have argued that putting more agents on the border and ramping up deportations is the only way to get rid of the estimated 11 million unauthorized immigrants in the United States. Republican and Democratic leaders, including former President George W. Bush, Senator John McCain, and DHS Secretary Jane Napolitano, have rejected a mass deportation strategy as too costly and impractical. The Center for American Progress has estimated that it would cost \$41.2 billion each year for a period of five years to deport the undocumented population. Economists have pointed out that deportation of millions of unauthorized workers and their families would hurt the American economy. A large-scale deportation would also disrupt thousands of jobs and be disastrous for the American economy.

### **Criminalizing the Undocumented**

In 2005, the House of Representatives passed the Border Protection, Anti-terrorism, and Illegal Immigration Control Act (H.R. 4437) which would have made it a criminal offense to live in the United States without authorization. Generally, a person living in the United States without a valid visa or green card is in violation of civil immigration laws but has **not** committed a crime. Technically referred to as “unauthorized presence,” the act of remaining in the country without permission can result in deportation but generally not criminal prosecution.

Concerns about proposals that criminalize unlawful presence include the following:

- Unauthorized presence encompasses even minor violations, including entering the United

States with a valid visa but staying longer than permitted. For example, a college student who does not take enough credits is in violation of his visa, while a tourist’s visa may expire while he is in the hospital.

- Passing a law that criminalizes unauthorized presence would label millions of undocumented immigrants as “criminals” and push a huge class of people further underground where their identities will remain unknown.
- Criminalizing unauthorized presence would punish legitimate asylum seekers who have fled persecution and enter the United States without a valid visa. Other vulnerable groups, like victims of human trafficking, would also become criminals.
- Undocumented victims of domestic violence or human trafficking would be afraid to come forward and report abuse for fear that they, themselves, would be prosecuted for being in the U.S. without permission. Batterers and traffickers commonly threaten to call immigration officials to isolate their victims and subject them to further abuse.
- The federal court system is already overwhelmed by immigration cases. A law that criminalizes unauthorized presence would add millions of criminal cases to courts and impose prohibitive expenses for the prosecution and incarceration of individuals, most of whom pose no danger to our communities.

### **Mandatory Deportation of Legal Immigrants With Criminal Convictions**

In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), a sweeping enforcement-only bill that virtually mandated deportation for lawful permanent residents who violate immigration laws, including some with

very minor criminal histories. As a result, immigration judges have been forced to order deportation, even when the result seems wholly unfair or inhumane. Take Mary Anne Gehris, a lawful permanent resident who came to the U.S. from Germany as an infant. After being arrested for pulling another woman's hair, Ms. Gehris pleaded guilty to a misdemeanor and was given a one-year suspended jail sentence. Despite the fact that she served no time in jail and was convicted of a misdemeanor, she faced automatic deportation. She was permitted to remain in the U.S. only after the pardon board of Georgia took the extraordinary step of granting her a pardon.

In a November 4, 1999 letter to the attorney general and INS commissioner, twenty-eight members of the House

of Representatives, including Lamar Smith and James Sensenbrenner, acknowledged that some deportations under IIRIRA “were unfair and resulted in unjustifiable hardship.” Yet proposals to build on the 1996 law surfaced again in the 109<sup>th</sup> and 110<sup>th</sup> Congresses, and we are likely to see similar proposals in the 112<sup>th</sup>. Tough-sounding proposals that mandate deportation do not make communities any safer—our laws already provide enforcement tools, including criminal prosecution and civil deportation proceedings, to protect communities from those who pose serious threats to public safety. Instead, they result in the mandatory deportation of lawful permanent residents whose strong family ties, record of honorable military service, solid work and tax history, community involvement, and other equities that weigh heavily in the favor of leniency.

## 6 ► Limiting the Opportunity for a Fair Hearing and Due Process

**A**ccess to courts is a fundamental principle of our country, both as a means to protect individual rights and to ensure that our laws are applied correctly and uniformly. Whether in a criminal or civil case, Americans value their right to a fair hearing by an impartial fact-finder who is trained to apply the law. In the immigration system, however, this principle has gradually been eroded. Several laws passed since 1996 have severely restricted the rights of immigrants—both legal and undocumented—to gain access to courts. In some cases, DHS officers have the authority to remove immigrants, including individuals fleeing persecution, without a court hearing. Federal district courts now retain only narrow authority to review DHS and DOJ decisions, barring many immigrants from obtaining independent judicial review of agency decisions.

Recent proposals to restrict court access even further have included provisions to prevent people who are applying for citizenship from appealing their case to the federal courts. Some lawmakers have proposed that summary deportations by DHS officers should be expanded.

Key reasons to preserve the right to a fair hearing and due process:

- Checks and balances are an essential feature of our government. Barring immigrants from seeking judicial review of DHS decisions means that there are no “checks” on mistakes made by individual officers or immigration judges.
- The dramatic consequences in immigration cases—usually deportation from the United States—means that a person's entire life circumstances could be changed overnight by a single officer whose decision is final.
- Greater use of summary deportations (those made without court hearings) will lead to increased deportations of asylum seekers and other immigrants who are entitled to remain in the U.S.
- Immigration law is complex and requires careful and objective analysis by trained judges. DHS officers are trained as enforcers of the law, not impartial fact-finders.

## 7 ► Attacks on the 14th Amendment

In July 2010, the idea of eliminating automatic citizenship for children born on U.S. soil gained renewed attention when Senator Lindsay Graham (R-SC) announced that he was considering introducing a constitutional amendment to revoke portions of the 14<sup>th</sup> Amendment to achieve this end. This long-established constitutional rule guarantees that U.S. citizenship is principally determined based on birthplace. Since then other members of Congress, including Senators John Kyl (R-AZ), John McCain (R-AZ), and Mitch McConnell (R-KY), have called for congressional hearings on birth citizenship. Congressman Steve King (R-IA) and others have already introduced legislation to redefine the meaning of the Fourteenth amendment to prevent the children of undocumented immigrants from receiving citizenship. Though many agree that our immigration system is broken, restricting rights granted under the 14<sup>th</sup> Amendment would do little to fix it and would actually increase the number of people in this country without a legal status. Moreover, such a step would be a drastic measure that would levy an enormous cost to our civil rights and civil liberties.

### About the 14<sup>th</sup> Amendment and the Citizenship Clause

The 14<sup>th</sup> amendment was adopted in 1868 and forms the cornerstone of American civil rights by ensuring due process and equal protection under the law to all persons. The Citizenship Clause of the 14<sup>th</sup> Amendment states: “All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.” The intent of the provision was to codify the existing Anglo-American common law rule of birthright citizenship and to reject the philosophy behind the infamous 1857 Supreme Court *Dred Scott* decision which sought to deny citizenship to US-born slaves and their children.<sup>1</sup>

This right to citizenship under the 14<sup>th</sup> Amendment

has been consistently recognized by courts and Attorneys General for over a century, most notably by the Supreme Court in *United States v. Wong Kim Ark*. With the exception of the brief period between the *Dred Scott* decision and the ratification of the 14<sup>th</sup> Amendment, birthright citizenship has been the rule since the founding of the Republic.

Since 1995, Republican members of Congress have introduced 28 separate bills aimed at restricting the citizenship rights granted under the 14<sup>th</sup> Amendment. They have justified such proposals using inaccurate and misleading scare-tactics such as claims about undocumented parents coming to the United States to give birth to “anchor babies” for the purpose of enabling the parents to gain legal immigration status. According to them, restricting birthright citizenship rights would solve this problem by preventing undocumented immigrants from circumventing immigration laws. However, the wait time for these parents to gain legal status is over two decades since children cannot begin the process of sponsoring their parents until they are at least twenty-one years old, and many of these parents would be required to return to their home country for a ten-year period, delaying the process further.

AILA rejects proposals that restrict the 14<sup>th</sup> Amendment’s guarantee of citizenship for persons born in the U.S.

- Any restrictions on the rights of citizenship guaranteed in the 14<sup>th</sup> Amendment would offend this country’s most sacred values and Constitutional principles. Placing limits on citizenship rights would re-establish the very same discriminatory exclusion that the 14<sup>th</sup> Amendment was intended to remedy.
- Civil rights leaders have already spoken out loudly and clearly that they view this proposal

<sup>1</sup>The Citizenship Clause language limiting its application to those “subject to the jurisdiction” of the United States, was intended to exclude children of foreign diplomats.

as an unprecedented and unacceptable attack on the rights of all Americans.

- Citizenship based on place of birth is a fundamental right inextricably tied to our liberty and equal rights. In America each person is born equal with no disadvantage or exalted status arising from the circumstance of their parentage.
- An actual repeal of the Citizenship Clause—which would have to be done by constitutional amendment—would be the first time our nation has amended the Constitution in an effort to restrict civil rights and civil liberties.
- The American public wants real solutions that address the problems with the immigration system and its inability to meet the needs of

the American economy, businesses, workers, and families. Proposing to restrict citizenship rights makes for tough-sounding, political rhetoric but does little to fix the system.

- Repeal of citizenship based on place of birth would create an administrative nightmare for most American citizens, who would be unable to use their birth certificates as proof of citizenship. The only alternative would be costly new bureaucracies, either to judge each new baby's worthiness to receive a birth certificate, or to create and run a national citizens' registry.
- Punishing innocent children by denying them Constitutional rights because of the misdeeds of their parents is mean-spirited and irresponsible.

## 8 ► Restrictions on Immigration That Hurt Families

For decades, the primary sources of legal immigration to the United States have been family members reuniting with their loved ones and workers filling jobs at American businesses. The reunification of families, in particular, has been rooted in American history with each successive wave of immigrants that has come from different parts of the world bringing their close family to join them. In rough economic times, not only business immigration but also family immigration has benefited our economy and aided job growth.

The current system allows U.S. citizens and lawful permanent residents to sponsor their spouses, children, parents and siblings for immigrant visas. In the absence of immigration reform, however, there are massive backlogs in visa applications that keep families waiting 10, 15 or even 20 years to be reunited.

Even with the backlogs in family visas, some lawmakers seeking to restrict immigration to the United States

have argued that the family visa system should be further limited. In the 112<sup>th</sup> Congress, AILA expects there will be proposals to reduce or eliminate certain family categories. Restrictions on family immigration would be a dramatic and unwise shift in American immigration policy. Immigrants who have the support of family members are better able to integrate into the mainstream of American society and become productive taxpayers. Now more than ever, with the economy like it is today, we need more people who can be committed to their new country, work hard, play by the rules, start businesses and pay taxes. These families will expand our tax base, broaden tax revenues, and strengthen our economy. Moreover the immigration system should not punish immigrants who have done everything right and come to our country legally by telling them they can never be reunited with their closest family members.

### The Points-Based System

Another idea has been to radically restructure the

immigration system and introduce a new points-based system for allocating visas. In 2007, Congress considered a proposal that would have replaced the family and employer sponsorship method with one based on points awarded for certain characteristics like age, education, employment skills and English proficiency. Earn enough points, and you can apply for a green card. There are many problems inherent in point system proposals:

- A point system would change the historical foundations of our immigration system and unhinge the immigration system from its grounding in family and employment relationships.
- A point system would be extremely difficult to implement and likely vulnerable to fraud.
- Point systems result in a mismatch of skills to fit the needs of the economy. A point system lumps all immigrant workers into a single pool, whatever the skill level. This would severely curtail family immigration, and favor

high-skilled over less-skilled workers, leaving industries like agriculture and construction without necessary manpower.

- A point system would place too much authority with the federal government to select who is best for jobs. This could leave some high-skilled industries without the workers required to fill specific positions, since employers would lose their ability to recruit the specialized knowledge and skills they need. Such a system would therefore compromise labor market flexibility, and threaten the United State's long-term economic competitiveness and stability.

Congress needs to formulate policies that build upon family strengths to ensure that future generations of immigrants continue to fulfill their extraordinary potential and track record of success. In order to maximize the contribution of family-based immigration, Americans need a system that will recognize the overwhelming economic contribution of family-based entrants and maintain family as the cornerstone of U.S. immigration policy.

## 9 ► Restricting Access to Benefits

**A**ILA also anticipates bills will be introduced in the 112<sup>th</sup> Congress that deny legal and unauthorized immigrants federally-funded public benefits. These proposals typically deny benefits to immigrants or clarify and reinforce that under existing law immigrants are not entitled to certain benefits. In the past, members have targeted Social Security benefits, the Earned Income Tax Credit (EITC), health care, and housing assistance programs. In addition, bills that create new programs often include provisions

that deny immigrants access to those benefits. AILA urges careful scrutiny of these proposals as they are frequently superfluous, symbolic statements that will have little practical impact, especially since undocumented immigrants are ineligible for most benefits and legal immigrants are severely restricted. Moreover, some proposals, like those that place more stringent requirements on EITC, will likely make it harder for U.S. citizens to obtain benefits and would even lead to erroneous denials.

## 10 ► English-Only Proposals

In recent years, lawmakers have proposed bills to make English the official language of the United States. One recent example is the English Language Unity Act of 2009 (H.R. 997) introduced by Representative Steve King, the vice-chair of the House Immigration Subcommittee. Typical provisions of English-only proposals include: (1) requiring English to be the official language of the United States; (2) requiring all federal government documents to be printed in English-only; and (3) prohibiting the use of funds that creates an entitlement to services provided in a language other than English.

English has never been declared the official language of the United States, although it is clearly the language of communication and commerce in our society. But English-only proposals raise public policy and constitutional concerns:

- An English-only law could undermine and limit the government's ability to provide access to critical information and services. For example, in the event of a natural disaster or terrorist

threat, English-only policies could impede the government's ability to convey warnings or post danger or hazard signs in languages other than English.

- In the area of public health, an English-only requirement could hinder the ability of medical personnel to communicate effectively with patients at federally-funded hospitals or the public at large, potentially complicating treatment or even facilitating the spread of communicable diseases
- Courts have concluded that state and local English-only laws violate the due process clause of the Fourteenth Amendment and the First Amendment on the ground that such laws they make it virtually impossible for persons who do not speak English well—whether they are U.S. citizens, legal immigrants, or undocumented workers—to communicate effectively and to assert their constitutional rights.

## Conclusion

The proposals outlined above range from very small fixes to expansive overhauls--they span from the largely symbolic to agency-wide funding bills. No matter their size or scope, however, they all will have enormous consequences not only for the immigration system but also immigrants themselves, American families, businesses, and communities. These ideas warrant the close attention of all members in the 112th Congress. AILA opposes nearly all the proposals described above or urges lawmakers to exercise caution before supporting them. AILA has long stood for the position that reform must be done sensibly to ensure America has an effective immigration system that meets our nation's needs. Immigration is an issue of such great importance to the United States that lawmakers can no longer turn to proposals that look easy but ultimately do not address the real issues. We urge the 112th Congress to roll up its sleeves and do the tough work of reform.



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