

"CIR Seeks PLS"

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If legislation could take out personal ads, the most forlorn entry would read: "CIR Seeks PLS" – Comprehensive Immigration Reform seeks Perfect Legislative Storm.

Experts estimate the population of undocumented (or "illegal"¹) aliens in the United States to be as many as 10 million.² Hundreds die each year trying to enter the U.S. surreptitiously through dangerous desert and mountain terrain.³ Construction worksites in Houston are abandoned when a private helicopter flying overhead is mistaken for a Border Patrol chopper.⁴ Activists on both sides (pro- and anti-immigration) keep the issue on the front page almost every day.

All of this adds up to a "crisis," which usually requires a legislative fix. There's no shortage of contenders: the AgJobs bill; the DREAM Act; the Cornyn bill; the McCain-Flake bill; the Daschle-Hagel bill, the SOLVE Act, and the President's own proposal.

Yet Senator McCain (R-AZ) angrily summed up the situation perfectly when he testified before the Senate on February 12, 2004, saying that while comprehensive immigration reform is essential and urgent, this Congress will do nothing because the issue is "too hot politically."

How did we get here? Why is immigration so radioactive? The purpose of this article is to trace the course of U.S. immigration law and policy for the

general reader⁵, and to make a rather glum prediction of the prospects for change in the short run.

Late 1800s: Targeting Race, Crime, and Poverty

Prior to the 1870s - 80s the United States had, for all practical purposes, "open borders."⁶ Federal immigration legislation began in earnest in 1875 with a law barring prostitutes and criminals from admission. In 1882 Congress enacted the Chinese Exclusion Act, barring all but a handful of Chinese from entering the United States. This shameful statute, based on national origin (Chinese "race") alone, stayed on the books until December 17, 1943 – over sixty years of racial exclusion. A separate 1882 act targeted paupers for exclusion, and enacted a head tax on new immigrants.

1920s: Numerical Restrictions

The first quantitative immigration restriction was the Quota Law of May 19, 1921, disguising racial preferences as numerical limits: it limited the number of aliens from any one country to three percent of the foreign-born persons from that country who lived in the United States in 1910. This worked out to be approximately 350,000 per year, primarily from Northern and Western Europe (with some exemptions for performing artists, members of the "learned professions," and domestic servants.) The statute was beefed-up in 1924, creating a legislative regime that controlled immigration until 1952. Among its many features was an expansion of racial exclusion to bar immigration by Japanese.

Mae M. Ngai, Assistant Professor of History at the University of Chicago, argues persuasively that the numerically restrictive regime of the 1920s – coupled with the increased use of passports and visas as the

¹ See, e.g., Kevin R. Johnson, "Aliens" and the U.S. Immigration Law: The Social and Legal Construction of Nonpersons, 28 U. Miami Inter-Am. L. Rev. 263, 268 (1996-97) ("[T]he term alien masks the privilege of citizenship and helps to justify the status quo.")

² Jeffrey Passel, Urban Institute, *Crossing Borders: The Impact of Immigration*, Feb. 3, 2004, <http://www.urban.org/url.cfm?ID=900680>.

³ Wayne A. Cornelius, *Death at the Border: Efficacy and Unintended Consequences of US Immigration Control Policy*, 27 Population & Development Rev. 661 (Dec. 2001).

⁴ *Raid Rumors Send Local Immigrants Into A Panic*, Houston Chronicle, April 25, 2004.

⁵ This article is intended as a starting point – a "fast forward" outline – for the lay reader with an interest in politics and social policy; those with a deeper knowledge of law and history will no doubt find the article overly simplified.

⁶ Apologies to Gerald L. Neuman (Columbia University), who has devoted a significant portion of his academic writing to the topic of the "open borders myth and the lost century of American immigration law," detailing the significant state law (as opposed to federal law) restrictions on migration. Neuman, *Strangers to the Constitution: Immigrants, Borders, and Fundamental Law*, 1996, Princeton University Press.

concept of "nationality" crystallized in the wake of World War One – created the phenomenon we now call the "illegal alien," a problem still with us some eighty years later.⁷

Two Days in May

The Immigration Act of May 26, 1924 established the national origins quota system, divided the world of aliens into "immigrants" and "nonimmigrants," and established the system under which all aliens were required to obtain visas from U.S. consular officers abroad before attempting to enter the U.S. Two days later, the Act of May 28, 1924 established the Border Patrol.

During the period between 1924 and 1952 a combination of factors, including the Great Depression, World War II, and seemingly intractable racism triggered waves of official deportations and unofficial "repatriations" by state or local agencies, and sweeping up untold tens of thousands of native-born U.S. citizens as well. As the economy (especially large-scale agriculture) waxed and waned, the flow of foreign workers only partially mirrored the need for their presence at any given time. The immigrants' natural human instinct to settle, to form communities and to raise families clashed with an increasingly effective Border Patrol, who were emboldened at times by local press xenophobic to a degree unimaginable to journalists of today.

The First "Amnesty:" 1929

While Congress, in 1986, tried to deal with the sheer numbers of undocumented aliens by granting two types of broad-based amnesties (see below) the first such amnesty came long before that – in 1929. The Registry Act of March 2, 1929 provided for the creation of a record of lawful admission – in effect, what we now call a "green card" – for aliens (other than those racially excluded, of course) who could prove entry prior to July 1, 1924. (The registry "window date" was pushed back to June 3, 1921 by a 1939 law.)

No Sub-Par Musicians, Please

Every year or two another layer would be added to the immigration law layer cake, barring this group or that category, usually reflecting the tenor of the times. At times the laws seem rationally related to crime-fighting: in 1931, for example, the grounds of deportation expanded to include aliens convicted of crimes related to heroin, opium and coca leaves. But sometimes the

exclusions border on the bizarre. In 1932 the immigration statutes were amended to put foreign musicians under the contract labor laws unless they were of "distinguished ability" and were coming to fulfill professional engagements requiring such skill level.

1940: From DOL to DOJ

For "national defense reasons," President Roosevelt shifted the administration of immigration law from the Department of Labor to the Department of Justice in 1940 as America's involvement in world war drew nigh. That same year, over the objection of the ACLU and others, Congress required all aliens over fourteen years of age to register and be fingerprinted. The law also added past membership (as well as present membership) in "proscribed organizations" (i.e., anarchist or terrorist groups) as a ground of exclusion or deportation.

Wartime Agriculture: Origins of the "Bracero" Program

The Act of April 29, 1943 provided for the "temporary" importation of farm hands needed to tend fields emptied of workers due to World War II. "Temporary" need turned into over twenty years of formal importation of agricultural labor, and even though the Mexican Bracero Program officially ended in 1964, American agribusiness has never deemed it profitable to wean itself of foreign labor. Current estimates are that roughly half of today's U.S. agricultural workforce is undocumented.⁸

Wartime Shame: Repeal of Chinese Exclusion

The World War II allied forces determined to defeat the Nazis, in part due to the Nazi exposition of racial superiority carried to its ultimate extreme: genocide. Yet America's immigration laws and policies still carried the stain of racial exclusion – the Chinese Exclusion Act of 1882 – and the ideological tension between our abhorrence for Nazi race theory and our own laws created an untenable propaganda dilemma. The solution called for the repeal, in December 1943, of Chinese exclusion. The ending of over sixty years of state-sanctioned racism was bittersweet: the amended law only allowed for a quota of 105 Chinese immigrants per year. Racist barriers tumbled further in 1946, providing quota slots for Indians and Filipinos.

1950: The "Red Scare" Takes Shape

In perhaps the first major expression of fully

⁷ Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America*, 2004, Princeton University Press.

⁸ March 21, 2002 Media Briefing, Pew Hispanic Center.

“retroactive” immigration legislation, the Internal Security Act of 1950 made current or former membership in the Communist Party grounds for exclusion and deportation – regardless of how long the alien might have lived in the United States. And in shades of current practice, the Act gave the Attorney General the power to exclude and deport aliens without a hearing, based on “confidential” information, the release of which would be “prejudicial” to the “public interest.”

The “Texas Proviso,” and The Border Creeps Inland

In March 1952 Congress criminalized alien smuggling and harboring – with a giant loophole called the “Texas Proviso,” named after the agricultural interests from that state, providing that employment of undocumented workers did not constitute harboring. In the same piece of legislation, Congress effectively moved the border: the Border Patrol could now cross private lands anywhere within twenty-five miles of the borderline in pursuit of illegal crossers.

The INA and Truman's Veto

In the wake of Allied victory in World War II, a perceived internationalist trend in Congress threatened to “liberalize” immigration law and policy; the isolationists fought back, and won with a vengeance. The Immigration and Nationality Act of 1952 (“INA”) revamped, re-wrote, and consolidated all prior immigration laws into one over-arching, comprehensive statute. To some extent it modernized and improved the prior haphazard collation of statutes. But its key features prompted a remarkable and blistering – yet almost forgotten – veto message by Harry Truman. In pertinent part, President Truman wrote:

In one respect, this bill recognizes the great international significance of our immigration and naturalization policy, and takes a step to improve existing laws. All racial bars to naturalization would be removed, and at least some minimum immigration quota would be afforded to each of the free nations of Asia.

...But now this most desirable provision comes before me embedded in a mass of legislation which would perpetuate injustices of long standing against many other nations of the world, hamper the efforts we are making to rally the men of East and West alike to the cause of freedom, and intensify the repressive and inhumane aspects of our immigration procedures. The price is too high, and in good conscience I cannot agree to pay it.

I want all our residents of Japanese ancestry, and all our friends throughout the far East, to understand this point clearly. I cannot take the step I would like to take, and strike down the bars that prejudice has erected against them, without, at the same time, establishing new discriminations against the peoples of Asia and approving harsh and repressive measures directed at all who seek a new life within our boundaries. I am sure that with a little more time and a little more discussion in this country the public conscience and the good sense of the American people will assert themselves, and we shall be in a position to enact an immigration and naturalization policy that will be fair to all.

... The bill would continue, practically without change, the national origins quota system, which was enacted, into law in 1924, and put into effect in 1929. This quota system—always based upon assumptions at variance with our American ideals—is long since out of date and more than ever unrealistic in the face of present world conditions.

This system hinders us in dealing with current immigration problems, and is a constant handicap in the conduct of our foreign relations.
...

The inadequacy of the present quota system has been demonstrated since the end of the war, when we were compelled to resort to emergency legislation to admit displaced persons. If the quota system remains unchanged, we shall be compelled to resort to similar emergency legislation again, in order to admit any substantial portion of the refugees from communism or the victims of overcrowding in Europe.

With the idea of quotas in general there is no quarrel. Some numerical limitation must be set, so that immigration will be within our capacity to absorb. But the overall limitation of numbers imposed by the national origins quota system is too small for our needs today, and the country by country limitations create a pattern that is insulting to large numbers of our finest citizens, irritating to our allies abroad, and foreign to our purposes and ideals.
...

The greatest vice of the present quota system,

however, is that it discriminates, deliberately and intentionally, against many of the peoples of the world. The purpose behind it was to cut down and virtually eliminate immigration to this country from Southern and Eastern Europe. A theory was invented to rationalize this objective. The theory was that in order to be readily assimilable, European immigrants should be admitted in proportion to the numbers of persons of their respective national stocks already here as shown by the census of 1920. Since Americans of English, Irish and German descent were most numerous, immigrants of those three nationalities got the lion's share—more than two-thirds—of the total quota. The remaining third was divided up among all the other nations given quotas.

The desired effect was obtained. Immigration from the newer sources of Southern and Eastern Europe was reduced to a trickle. The quotas allotted to England and Ireland remained largely unused, as was intended. Total quota immigration fell to a half or a third—and sometimes even less—of the annual limit of 154,000. People from such countries as Greece, or Spain, or Latvia were virtually deprived of any opportunity to come here at all, simply because Greeks or Spaniards or Latvians had not come here before 1920 in any substantial numbers.

The idea behind this discriminatory policy was, to put it baldly, that Americans with English or Irish names were better people and better citizens than Americans with Italian or Greek or Polish names. It was thought that people of West European origin made better citizens than Rumanians or Yugoslavs or Ukrainians or Hungarians or Baits or Austrians. Such a concept is utterly unworthy of our traditions and our ideals. It violates the great political doctrine of the Declaration of Independence that "all men are created equal." It denies the humanitarian creed inscribed beneath the Statue of Liberty proclaiming to all nations, "Give me your tired, your poor, your huddled masses yearning to breathe free."

It repudiates our basic religious concepts, our belief in the brotherhood of man, and in the words of St. Paul that "there is neither Jew nor Greek, there is neither bond nor free ... for ye are all one in Christ Jesus."

...

Today, we have entered into an alliance, the North Atlantic Treaty, with Italy, Greece, and Turkey against one of the most terrible threats mankind has ever faced. We are asking them to join with us in protecting the peace of the world. We are helping them to build their defenses, and train their men, in the common cause. But, through this bill we say to their people: You are less worthy to come to this country than Englishmen or Irishmen; you Italians, who need to find homes abroad in the hundreds of thousands—you shall have a quota of 5,645; you Greeks, struggling to assist the helpless victims of a communist civil war—you shall have a quota of 308; and you Turks, you are brave defenders of the Eastern flank, but you shall have a quota of only 225!

Today, we are "protecting" ourselves, as we were in 1924, against being flooded by immigrants from Eastern Europe. This is fantastic. The countries of Eastern Europe have fallen under the communist yoke—they are silenced, fenced off by barbed wire and minefields—no one passes their borders but at the risk of his life. We do not need to be protected against immigrants from these countries—on the contrary we want to stretch out a helping hand, to save those who have managed to flee into Western Europe, to succor those who are brave enough to escape from barbarism, to welcome and restore them against the day when their countries will, as we hope, be free again. But this we cannot do, as we would like to do, because the quota for Poland is only 6,500, as against the 138,000 exiled Poles, all over Europe, who are asking to come to these shores; because the quota for the now subjugated Baltic countries is little more than 700—against the 23,000 Baltic refugees imploring us to admit them to a new life here; because the quota for Rumania is only 289, and some 30,000 Rumanians, who have managed to escape the labor camps and the mass deportations of their Soviet masters, have asked our help. These are only a few examples of the absurdity, the cruelty of carrying over into this year of 1952 the isolationist limitations of our 1924 law.

In no other realm of our national life are we so hampered and stultified by the dead hand of the past, as we are in this field of immigration. We do not limit our cities to their 1920 boundaries—we do not hold our corporations to their 1920 capitalizations—we welcome progress

and change to meet changing conditions in every sphere of life, except in the field of immigration.

The time to shake off this dead weight of past mistakes is now. The time to develop a decent policy of immigration—a fitting instrument for our foreign policy and a true reflection of the ideals we stand for, at home and abroad—is now.

... None of this fruitful experience of the last three years is reflected in this bill before me. None of the crying human needs of this time of trouble is recognized in this bill. But it is not too late. The Congress can remedy these defects, and it can adopt legislation to meet the most critical problems before adjournment.

The only consequential change in the 1924 quota system which the bill would make is to extend a small quota to each of the countries of Asia. But most of the beneficial effects of this gesture are offset by other provisions of the bill. The countries of Asia are told in one breath that they shall have quotas for their nationals, and in the next, that the nationals of the other countries, if their ancestry is as much as 50 percent Asian, shall be charged to these quotas.

It is only with respect to persons of oriental ancestry that this invidious discrimination applies. All other persons are charged to the country of their birth. But persons with Asian ancestry are charged to the countries of Asia, wherever they may have been born, or however long their ancestors have made their homes outside the land of their origin. These provisions are without justification.

I now wish to turn to the other provisions of the bill, those dealing with the qualifications of aliens and immigrants for admission, with the administration of the laws, and with problems of naturalization and nationality. In these provisions too, I find objections that preclude my signing this bill.

The bill would make it even more difficult to enter our country. Our resident aliens would be more easily separated from homes and families under grounds of deportation, both new and old, which would specifically be made retroactive. Admission to our citizenship would be made more difficult; expulsion from our citizenship would be made easier. Certain rights

of native born, first generation Americans would be limited. All our citizens returning from abroad would be subjected to serious risk of unreasonable invasions of privacy. Seldom has a bill exhibited the distrust evidenced here for citizens and aliens alike—at a time when we need unity at home, and the confidence of our friends abroad.

We have adequate and fair provisions in our present law to protect us against the entry of criminals. The changes made by the bill in those provisions would result in empowering minor immigration and consular officials to act as prosecutor, judge and jury in determining whether acts constituting a crime have been committed. Worse, we would be compelled to exclude certain people because they have been convicted by "courts" in communist countries that know no justice. Under this provision, no matter how construed, it would not be possible for us to admit many of the men and women who have stood up against totalitarian repression and have been punished for doing so. I do not approve of substituting totalitarian vengeance for democratic justice. I will not extend full faith and credit to the judgments of the communist secret police.

The realities of a world, only partly free, would again be ignored in the provision flatly barring entry to those who made misrepresentations in securing visas. To save their lives and the lives of loved ones still imprisoned, refugees from tyranny sometimes misstate various details of their lives. We do not want to encourage fraud. But we must recognize that conditions in some parts of the world drive our friends to desperate steps. An exception restricted to cases involving misstatement of country of birth is not sufficient. And to make refugees from oppression forever deportable on such technical grounds is shabby treatment indeed.

Some of the new grounds of deportation which the bill would provide are unnecessarily severe. Defects and mistakes in admission would serve to deport at any time because of the bill's elimination, retroactively as well as prospectively, of the present humane provision barring deportations on such grounds five years after entry. Narcotic drug addicts would be deportable at any time, whether or not the addiction was culpable, and whether or not cured. The threat of deportation would drive the addict into hiding beyond the reach of cure, and

the danger to the country from drug addiction would be increased.

I am asked to approve the reenactment of highly objectionable provisions now contained in the Internal Security Act of 1950—a measure passed over my veto shortly after the invasion of South Korea. Some of these provisions would empower the Attorney General to deport any alien who has engaged or has had a purpose to engage in activities "prejudicial to the public interest" or "subversive to the national security." No standards or definitions are provided to guide discretion in the exercise of powers so sweeping. To punish undefined "activities" departs from traditional American insistence on established standards of guilt. To punish an undefined "purpose" is thought control.

These provisions are worse than the infamous Alien Act of 1798, passed in a time of national fear and distrust of foreigners, which gave the President power to deport any alien deemed "dangerous to the peace and safety of the United States." Alien residents were thoroughly frightened and citizens much disturbed by that threat to liberty.

Such powers are inconsistent with our democratic ideals. Conferring powers like that upon the Attorney General is unfair to him as well as to our alien residents. Once fully informed of such vast discretionary powers vested in the Attorney General, Americans now would and should be just as alarmed as Americans were in 1798 over less drastic powers vested in the President.

Heretofore, for the most part, deportation and exclusion have rested upon findings of fact made upon evidence. Under this bill, they would rest in many instances upon the "opinion" or "satisfaction" of immigration or consular employees. The change from objective findings to subjective feelings is not compatible with our system of justice. The result would be to restrict or eliminate judicial review of unlawful administrative action.

The bill would sharply restrict the present opportunity of citizens and alien residents to save family members from deportation. Under the procedures of present law, the Attorney General can exercise his discretion to suspend deportation in meritorious cases. In each such

case, at the present time, the exercise of administrative discretion is subject to the scrutiny and approval of the Congress. Nevertheless, the bill would prevent this discretion from being used in many cases where it is now available, and would narrow the circle of those who can obtain relief from the letter of the law. This is most unfortunate, because the bill, in its other provisions, would impose harsher restrictions and greatly increase the number of cases deserving equitable relief.

Native-born American citizens who are dual nationals would be subjected to loss of citizenship on grounds not applicable to other native-born American citizens. This distinction is a slap at millions of Americans whose fathers were of alien birth.

Children would be subjected to additional risk of loss of citizenship. Naturalized citizens would be subjected to the risk of denaturalization by any procedure that can be found to be permitted under any State law or practice pertaining to minor civil law suits. Judicial review of administrative denials of citizenship would be severely limited and impeded in many cases, and completely eliminated in others. I believe these provisions raise serious constitutional questions. Constitutionality aside, I see no justification in national policy for their adoption.

Section 401 of this bill would establish a Joint Congressional Committee on Immigration and Nationality Policy. This committee would have the customary powers to hold hearings and to subpoena witnesses, books, papers and documents. But the Committee would also be given powers over the Executive branch which are unusual and of a highly questionable nature. Specifically, section 401 would provide that "The Secretary of State and the Attorney General shall without delay submit to the Committee all regulations, instructions, and all other information as requested by the Committee relative to the administration of this Act."

This section appears to be another attempt to require the Executive branch to make available to the Congress administrative documents, communications between the President and his subordinates, confidential files, and other records of that character. It also seems to imply that the Committee would undertake to

supervise or approve regulations. Such proposals are not consistent with the Constitutional doctrine of the separation of powers.

In these and many other respects, the bill raises basic questions as to our fundamental immigration and naturalization policy, and the laws and practices for putting that policy into effect.

Many of the aspects of the bill which have been most widely criticized in the public debate are reaffirmations or elaborations of existing statutes or administrative procedures. Time and again, examination discloses that the revisions of existing law that would be made by the bill are intended to solidify some restrictive practice of our immigration authorities, or to overrule or modify some ameliorative decision of the Supreme Court or other Federal courts. By and large, the changes that would be made by the bill do not depart from the basically restrictive spirit of our existing laws—but intensify and reinforce it⁹

Two days later, on June 27, 1952, Congress overrode his veto by a vote of 278 to 113 in the House, and 57 to 26 in the Senate. Fear won out.

1965: LBJ, Civil Rights and Immigration Reform – The Perfect (Positive) Storm

The spirit of reform, however, did not die, and the civil rights revolution, coupled with Lyndon Johnson's overweening desire to outperform all prior presidents on all possible fronts, created the "perfect legislative storm" resulting in the 1965 Hart-Celler bill, which abolished, finally, the national origins quota system. In the signing ceremony at the Statute of Liberty, President Johnson hailed the bill as correcting "a deep and painful flaw in the fabric of American justice." As Daniel J. Tichenor tells it, "the demise of the national origins quota system came only at the zenith of the Great Society, when an extraordinary convergence of pro-immigration developments propelled an opening of the gates. In the final analysis, the expansive turn of national immigration policy in 1965 sprang from a familiar set of order-shattering forces: new international pressures, shifting group alliances, fresh expertise, and institutional

change."¹⁰

Bill Moyers is at work on an LBJ biography, and Robert Caro is writing his fourth and final volume on the career of Johnson: both of them would do well to include chapters on Johnson's evolution from a supporter of the 1952 INA to the reformer he became in 1965.

The 1986 Amnesty: An Imperfect Carrot, and No Stick At All

The 1965 reform brought U.S. immigration law and policy into the modern age, but it failed utterly to address a key structural fact: any politically acceptable numerical quota (i.e., low in numbers relative to demand), no matter how fairly administered, will result in "illegal" immigration, as explained by Ngai, *supra*. Thus, by the 1980s the number of undocumented immigrants in American was in the millions. The congressional "solution" was the application of a very large, and very loose, Band-Aid – IRCA, the Immigration Reform and Control Act of 1986.

IRCA tried to solve the immigration "problem" from two angles. On the one hand, it provided a pair of amnesties (one for agricultural workers, another for long-time undocumented residents) that would, in time, "legalize" millions. On the other hand, it repealed the "Texas Proviso" and made the hiring of undocumented aliens a civil offense, and, in some cases, a crime.

Both angles failed miserably. The amnesties covered some, but not all of those unlawfully present in the United States, and the litigation over the details continues to this day. Further, with the basic numerical quota system untouched, the undocumented population continued to grow. And the "employer sanctions" angle was never convincingly enforced: almost any employer today, in almost any industry, can easily circumvent sanctions, and aliens intent on working in the U.S. can buy fake documentation on the street that most employers will accept without a second glance.

The "winners" from IRCA included the few millions who legalized, and the many thousands of federal bureaucrats and immigration lawyers who administered the new statute. The public's faith in meaningful immigration reform, on the other hand, took a beating.

1996: Clinton, Oklahoma City, and the Border

⁹ Veto message to House of Representatives, June 25, 1952.

¹⁰ Tichenor, *Dividing Lines: The Politics of Immigration Control in America*, 2002, Princeton University Press, page 217. Tichenor and Ngai (footnote 7, *supra*) are essential reading for understanding the history of U.S. immigration law and policy.

“Crisis” – The Perfect (Negative) Storm

IRCA set the stage for the next perfect storm, but no one predicted that it would be triggered by a fanatical U.S. citizen, a 27-year-old decorated Army veteran of the first Gulf War by the name of Timothy McVeigh. In the wake of the Oklahoma City bombing Congress quickly passed two massive bills in 1996 – the Antiterrorism and Effective Death Penalty Act (“AEDPA”) and the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRAIRA.”) Both were received as potentially deadly body blows by the immigrant advocacy community.

In short, the bills tightened the grounds of exclusion and deportation, tightened some waivers and removed others, made detention mandatory for vastly greater numbers of deportable aliens, and radically restricted judicial review of immigration agency action.

President Clinton, while expressing some reservations over the more restrictive aspects of AEDPA and IIRAIRA, signed them both. Of course, two years earlier Clinton had instructed Attorney General Janet Reno and then INS Commissioner Doris Meissner to gain control the southern border. The result was Operation Gatekeeper, a disastrous policy of walling border crossers off from the urban crossing areas (so as to keep them out of the public eye) that resulted in border deaths skyrocketing as migrants crossed in ever-more dangerous terrain.

Conclusion: Waiting For The Next Perfect Storm

The pro-immigrant community had been making painfully slow gains after the 1996 disaster. Then came September 11, 2001. The roundups, detentions and secret proceedings against Middle Eastern immigrants were sadly predictable, as was the legislative fallout: the Homeland Security Act of 2002 and the Enhanced Border Security and Visa Entry Reform Act of 2002. The first bill abolished the long-dysfunctional INS and split its functions among three new bureaucracies: the Bureau of Customs and Border Protection (CBP); the Bureau of Immigration and Customs Enforcement (ICE); and the Bureau of Citizenship and Immigration Services (USCIS.) The second bill sets the stage for the eventual “registration” (fingerprinting and photographing) of every alien at every entry and every exit – truly a project of staggering scope.

Almost forgotten now in the pre-election frenzy is that just prior to 9/11 President Bush and Mexican President Vicente Fox were in the thick of efforts to develop comprehensive immigration reform. Those efforts were put on the far back burner, but they did not die, and in July 2003 the legislative pots began to move to the front

burners when Sen. John Cornyn (R-TX) filed the first reform bill, the Border Security and Immigration Reform Act of 2003. A flurry of bills followed: AgJobs, a bipartisan, bicameral effort to completely reform quotas and categories for agricultural workers; the Daschle-Hagel bill; the SOLVE Act; the McCain-Flake bill; the DREAM Act, and others.

And in January 2004 President Bush gave a speech calling for comprehensive immigration reform. To date, however, his proposal has not been put into writing in the form of a bill, nor has the President backed any of the pending bills, even those sponsored by conservative Republicans such as Cornyn and Hatch (author of the DREAM Act). If the president were to indicate support for AgJobs, DREAM or any other bill, it would likely sail through Congress, but Bush seems afraid to step out from behind his speech.

As the election draws closer, the revelations of torture at Abu Ghraib and the quagmire effect of Iraq will likely prevent Bush from going out on any limb, and even his January speech drew fire from the hard right wing of his “base.” Thus, if Bush is re-elected, he will get behind, at most, one of the partial fixes such as DREAM or perhaps AgJobs. The perfect storm that would propel SOLVE or Daschle-Hagel to the front burner is not even on the radar.

The next round of (positive) comprehensive immigration reform will require a perfect storm with the following elements: presidential leadership willing to stand up to the restrictionist Right; congressional compromise (as exemplified by AgJobs) demonstrating a preference for action over posturing; and an educated public willing to accept a more rational immigration system as the price for abolishing what is, in effect, a national “plantation” system, with 10 million human beings acting as our less-than-equal servants.

Flashing back to 1965, LBJ and the last (positive) perfect legislative storm calls to mind another gem from that year, Bob Dylan’s Subterranean Homesick Blues: “... I’m on the pavement, thinkin’ ‘bout the government.”

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