

## **Should people who want comprehensive immigration reform vote for Hillary?**

By Nolan Rappaport



### **HILLARY'S IMMIGRATION REFORM POLICIES<sup>1</sup>**

According to Hillary Clinton, America needs comprehensive immigration reform with a pathway to citizenship. I agree, but I do not think her vision of comprehensive immigration reform is really “comprehensive.” According to the Oxford dictionary, “comprehensive” means “Complete; including all or nearly all elements or aspects of something.”<sup>2</sup> Hillary’s immigration reform policies do not do this. To be comprehensive, immigration reform cannot just provide ways to fix the problems that concern the Democrats, which is what Hillary is doing. It also should address the issues that are important to the Republicans, such as interior enforcement and border security. In other words, to be comprehensive, it would have to meet the political needs of both parties.

Hillary is not alone in her approach to immigration reform. To my knowledge, the Democrats have not had a truly bipartisan immigration reform bill in the last 30 years. For instance, the Senate has passed two major immigration reform bills, but both were opposed by a majority of the Senate Republicans. On May 25, 2006, the Senate passed the Comprehensive Immigration Reform Act of 2006, S. 2611, with a vote of 62 yeas and 36 nays. Only 23 Republican senators voted for it; the other 32 Republicans and four Democrats voted against it. In other words, it was opposed by 58% of the Senate Republicans. On June 27, 2013, the Senate passed the Border Security, Economic Opportunity, and Immigration Modernization Act of 2013, S. 744, with 68 yeas and 32 nays. Although it was written by a bipartisan group of eight senators known as the

“Gang of Eight,” it was opposed by 70% of the Senate Republicans. Only fourteen of the Republicans voted for the bill; the other 32 voted against it. And both bills were dead on arrival when they reached the Republican-controlled House of Representatives.<sup>3</sup>

I am only aware of one successful immigration reform bill that had such one-sided political support, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA),<sup>4</sup> which was an extremely harsh Republican bill. I am very familiar with IIRIRA because I was brought to the House Judiciary Committee in 1997, as an Executive Branch Immigration Law Expert, to analyze IIRIRA and write a bill for the Democrats to fix the provisions that had taken the fairness and compassion out of our immigration laws. The bill I wrote, the Restoration of Fairness in Immigration Law Act of 2000, was introduced by Congressman John Conyers, with 47 cosponsors, on July 26, 2000.<sup>5</sup> It was the legislative foundation for the “Fix’96” campaign.

Ironically, IIRIRA was signed into law by Hillary’s husband, Bill, who apparently agreed with Republican enforcement policies. When his chief of staff, Leon Panetta, gave a briefing on IIRIRA, he said, “We were able, I think, as a result of this negotiation to be able to modify -- eliminate the large hits with regards to legal immigrants while keeping some very strong enforcement measures with regards to illegal immigration.”<sup>6</sup> Moreover, Bill’s formal statement at the signing ceremony explicitly says that he is in favor of strengthening the rule of law by cracking down on illegal immigration at the border, in the workplace, and in the criminal justice system. The pertinent part of his statement reads as follows:

This bill, however, does more than fund major portions of the Government for the next fiscal year. It also includes landmark immigration reform legislation that builds on our progress of the last three years. It strengthens the rule of law by cracking down on illegal immigration at the border, in the workplace, and in the criminal justice system—without punishing those living in the United States legally.

Specifically, the bill requires the sponsors of legal immigrants to take added responsibility for their well-being. And it does not include the so-called Gallegly amendment, which I strongly opposed and which would have allowed States to refuse to educate the children of illegal immigrants. At my insistence the bill does not include the proposed onerous provisions against legal immigrants, which would have gone beyond the welfare reform law.

I am pleased that the Congress provided seven additional months of food assistance for needy immigrants, including benefits for many elderly and children. This step will provide some help to individuals and States in preparing for the dramatic restriction of access to benefits that legal immigrants will face under the welfare reform bill.

I am, however, extremely concerned about a provision in this bill that could lead to the Federal Government waiving the Endangered Species Act and the National Environmental Policy Act in order to expeditiously construct physical barriers and roads on the U.S. border. ... I am also concerned about a provision that imposes a new "intent requirement" in unfair immigration-related employment cases that could place hardships on some U.S. citizens and permanent residents. ... Finally, I will seek to correct

provisions in this bill that are inconsistent with international principles of refugee protection, including the imposition of rigid deadlines for asylum applications.

I wonder whether he still feels this way about immigration enforcement and, if so, whether his views will influence Hillary if she becomes our next president.

The last comprehensive immigration reform bill was passed thirty years ago, the Immigration Reform and Control Act of 1986 (IRCA). It was a bipartisan bill that took three years to move through the legislative process. It was a remarkable accomplishment, and Republican President Ronald Reagan was proud of it when he made his statement during the signing ceremony. He said:

[IRCA] is the product of one of the longest and most difficult legislative undertakings of recent memory. It has truly been a bipartisan effort, with this administration and the allies of immigration reform in the Congress, of both parties, working together to accomplish these critically important reforms....<sup>7</sup>

What happened after IRCA was enacted, however, is a different matter. It was supposed to permit the creation of a path to citizenship for undocumented immigrants in return for increased enforcement measures. It was intended to be a wipe-the-slate-clean and start over deal. The Republicans permitted approximately 2.7 million undocumented aliens to be legalized in return for border security and an effective interior enforcement program that would prevent the development of such large groups of undocumented aliens again in the future. But by the beginning of 1997, the 2.7 million legalized aliens had been replaced entirely by a new group of undocumented aliens.<sup>8</sup> In other words, the Democrats got their legalization program but the Republicans never got the border security or the interior enforcement program they were promised.<sup>9</sup> I believe that the Republicans would agree to the same deal now if they were assured that this time, they will get border security and interior enforcement before the legalization program is implemented.

#### **HILLARY SAYS THAT AS PRESIDENT, SHE WILL DO THE FOLLOWING:**

**Fight for comprehensive immigration reform.** She wants legislation with a pathway to citizenship that would keep families together and enable millions of workers to come out of the shadows.

These are good objectives, but she should address Republican objections to a legalization program, such as concern that in many cases it will not be possible to determine who the undocumented aliens coming out of the shadows really are or where they are really from. It is very difficult to do a meaningful background investigation without that information.

**Defend President Obama's DACA and DAPA executive actions.** In fact, she would take these programs even further. She says that if Congress continues its refusal to act on comprehensive immigration reform, she will establish a simple, straightforward, accessible system for parents of DREAMers and others with a history of service and contribution to their communities to be able to make their case and be eligible for deferred action as well.

I think these programs are a mistake. The lawful status and work authorization they grant are only temporary; they can be taken away by the issuance of a new executive order. And these programs put a target on the backs of the participants by making it very easy for a future, enforcement-minded president to shuffle them out of the country at an exceptionally rapid rate through expedited, group removal proceedings. For details, see my article, “President Obama’s use of executive discretion could have unintended consequences if Donald Trump becomes our next president.”<sup>10</sup>

**End the three and ten-year bars.** This refers to one of the hardships created by IIRIRA. Under these provisions, an alien who has been unlawfully present in the United States for a period of more than six months but less than one year, and has departed from the United States, is barred from returning for three years. An alien who has been unlawfully present in the United States for a period of more than one year, and has departed from the United States, is barred from returning for 10 years. These bars also apply to aliens who seek to obtain permanent resident status without leaving the country by applying for adjustment of status. Technically, requesting adjustment of status is the legal equivalent to being out of the country and applying for admission. The same exclusion grounds apply.

This problem is addressed in a bill that I wrote for Congresswoman Sheila Jackson Lee that she has modified and reintroduced in every new Congress, the Save America Comprehensive Immigration Act, including the present one.”<sup>11</sup> Moreover, Congresswoman Jackson Lee has addressed all of the other harsh provisions in IIRIRA also. The House Judiciary Committee held a hearing on a previous version of this bill on November 8, 2007.<sup>12</sup> One of the witnesses, Charles H. Kuck, President-Elect for the American Immigration Lawyers Association, addressed the three and ten-year bars in his testimony. According to Kuck, “it is estimated that there are three million American citizens married to individuals who would be required to leave the country or to legalize their immigration status.” The Save America Act provision on this bar, would make it possible for these individuals to become lawful permanent residents, “which then leaves you three million less people to worry about as you begin the process of truly enforcing immigration law.”<sup>13</sup>

**Promote naturalization.** This is a common Democratic measure, particularly when an election is approaching. The Republicans claim that the Democrats do this because they expect the new citizens to become Democrats. In any case, President Obama started a new campaign to encourage legal immigrants to become citizens on September 17, 2015.<sup>14</sup>

**Support immigrant integration.** The United States is home to an estimated 42 million immigrants—13% of the overall U.S. population. But, according to Hillary, in too many communities, immigrants still face significant language, education, and economic barriers that prevent them from fully participating in their new home. Hillary plans to break down these barriers and support successful immigrant integration. Among other things, she would support affordable integration services through \$15 million in new grant funding for community navigators and similar organizations, and she would create a national Office of Immigrant Affairs to ensure successful immigrant and refugee integration in every community.

I am in complete agreement with this objective. My only concern is that it could be very expensive, particularly her plan to create a national Office of Immigrant Affairs. According to the U.S. Department of the Treasury, the national debt as of July 7, 2016, was \$19,360,176,741,617.54.<sup>15</sup> This means that we will be closing in on a national debt of 20 trillion dollars when the next president takes office. We should be cutting back on national expenses, not creating expensive new programs.

**Expand access to affordable health care to all families.** Hillary has been fighting her entire life to ensure that families have access to affordable health care. She sponsored the Immigrant Children’s Health Improvement Act in the Senate, which later became law and allows immigrant children and pregnant women to obtain Medicaid and SCHIP. She believes we should let families—regardless of immigration status—buy into the Affordable Care Act exchanges. Families who want to purchase health insurance should be able to do so.

I agree that no one should be denied needed health care in the United States, but again, the problem is money. How much would it cost to make health care available to everyone who manages to enter the United States, legally or not? This is a particularly serious problem in view of Hillary’s enforcement policies, which would encourage many more people to come here illegally.

**Conduct humane, targeted immigration enforcement.** Hillary believes immigration enforcement must be humane, targeted, and effective. She intends to focus enforcement resources on detaining and deporting individuals who pose a violent threat to public safety.

I agree that this should be the priority, but it would be a grievous error to restrict enforcement solely to aliens who pose a violent threat to public safety. Among other problems this would create, it would make border security virtually impossible by announcing to the world that aliens who enter the United States illegally will be safe from deportation once they have reached the interior of the country. That would be a powerful incentive to make as many attempts as it takes to reach the interior of the United States.

Hillary’s policy also would attract aliens from the 38 Visa Waiver Program (VWP) countries who would like to live and work in the United States but cannot get an immigrant visa. They would be able to enter the United States as visitors under the VWP and overstay their visits without fear of being deported.

Citizens and nationals from VWP countries just have to complete an online computer registration to establish eligibility for admission under the VWP program. Aliens who are not citizens or nationals of a VWP country generally need a visa to enter the United States, regardless of whether it is to live and work here or just to visit, and this is a much more involved process than the one required for entry under the VWP. First, the person seeking the visa must complete an online visa application, Form DS-160, which among other things requires the applicant to upload a photograph of himself/herself. If the applicant is between the ages of 14 and 79, an interview is required. In addition to bringing the required documentation (passport, Form DS-160 confirmation, and application fee payment receipt), additional documentation may be required to establish such things as the purpose of the trip, evidence of intent to depart the United States at

the end of the trip, and evidence of ability to pay all costs of the trip. Also, the person's fingerprints are taken with digital fingerprint scans.<sup>16</sup>

Also, a violent threat to public safety is only one of the threats that immigration enforcement is intended to protect us from, e.g., it also prohibits the admission of aliens who have communicable diseases, who have engaged in terrorist activities, who have engaged in or are planning to engage in espionage, who intend to overthrow the United States government by force or through some other illegal means, who have participated in Nazi persecution or genocide, and aliens who have tortured people or committed extrajudicial killings. For more details, see my article, "Should deportations be restricted to deportable aliens who have criminal records?"<sup>17</sup>

**Family Detention.** Hillary believes we should end family detention for parents and children who arrive at our border in desperate situations. We have alternatives to detention for those who pose no flight or public safety risk, such as supervised release, that have proved effective and cost a fraction of what it takes to keep families in detention.

I agree that few families pose a public safety risk, but many of them have made long, dangerous journeys to reach the United States and paid large sums of money to be smuggled into the country. I have trouble believing that they will not pose a flight risk if they are released from custody.

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<sup>1</sup> Hillary Clinton, "America needs comprehensive immigration reform with a pathway to citizenship." Available at, <https://www.hillaryclinton.com/issues/immigration-reform/>

<sup>2</sup> Oxford Dictionaries, "comprehensive," [http://www.oxforddictionaries.com/us/definition/american\\_english/comprehensive](http://www.oxforddictionaries.com/us/definition/american_english/comprehensive)

<sup>3</sup> Nolan Rappaport, "It is time to try a different approach to comprehensive immigration reform." (May 2, 2014), <http://discuss.ilw.com/content.php?3087-Article-It-is-time-to-try-a->

<sup>4</sup> Pub. L. 104-208, "Illegal Immigration Reform and Immigrant Responsibility Act of 1996," <https://www.uscis.gov/sites/default/files/ocomm/ilink/0-0-0-10948.html>

<sup>5</sup> H.R.4966 – "Restoration of Fairness in Immigration Law Act of 2000," <https://www.congress.gov/bill/106th-congress/house-bill/4966>

<sup>6</sup> Leon Panetta, White House Chief of Staff, Press Release, (September 30, 1996), <http://clinton6.nara.gov/1996/09/1996-09-30-briefing-by-panetta-rubin-and-raines.html>

<sup>7</sup> President Ronald Reagan, "Statement on Signing the Immigration Reform and Control Act of 1986" (November 6, 1986), <https://reaganlibrary.archives.gov/archives/speeches/1986/110686b.htm>

<sup>8</sup> Nolan Rappaport, "What is IRCA, and What Does It Have To Do with Comprehensive Immigration Reform?" (February 8, 2013), <https://www.lexisnexis.com/legalnewsroom/immigration/b/immigration-law-blog/archive/2013/02/08/what-is-irca-and-what-does-it-have-to-do-with-comprehensive-immigration-reform.aspx?Redirected=true>

<sup>9</sup> President William J. Clinton, "Statement on Signing the Omnibus Consolidated Appropriations Act, 1997" (September 30, 1996), <http://www.presidency.ucsb.edu/ws/index.php?pid=52021>

<sup>10</sup> Nolan Rappaport, "President Obama's use of executive discretion could have unintended consequences if Donald Trump becomes our next president." (March 7, 2016), <http://www.ilw.com/articles/2016,0307-Rappaport.pdf>

<sup>11</sup> Congresswoman Sheila Jackson Lee, H.R. 52, "Save America Comprehensive Immigration Act of 2015," <https://www.govtrack.us/congress/bills/114/hr52>

<sup>12</sup> Hearing before the House Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law" (November 8, 2007), <https://www.gpo.gov/fdsys/pkg/CHRG-110hhrg38766/pdf/CHRG-110hhrg38766.pdf>

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<sup>13</sup> Hearing before the House Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law” (November 8, 2007), supra, at pp. 74-75.

<sup>14</sup> Julia Preston, “White House Campaign Urges Legal Immigrants to Become (Voting) Citizens,” (September 17, 2015), [http://www.nytimes.com/2015/09/18/us/white-house-campaign-legal-immigrants-citizenship.html?\\_r=0](http://www.nytimes.com/2015/09/18/us/white-house-campaign-legal-immigrants-citizenship.html?_r=0)

<sup>15</sup> Treasury Direct, “The Debt to the Penny and Who Holds It,” <http://www.treasurydirect.gov/NP/debt/current>

<sup>16</sup> Nolan Rappaport, “Is the Visa Waiver Program as secure as it is supposed to be?” (September 10, 2014), <http://discuss.ilw.com/content.php?3494-Article-Is-the-Visa-Waiver-Program-as-secure-as-it-is->

<sup>17</sup> Nolan Rappaport, “Should deportations be restricted to deportable aliens who have criminal records?” (March 17, 2016), <http://www.ilw.com/articles/2016,0317-Rappaport.pdf>

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**Nolan Rappaport** was detailed to the House Judiciary Committee as an Executive Branch Immigration Law Expert for three years; he subsequently served as the immigration counsel for the Subcommittee on Immigration, Border Security, and Claims for four years. Prior to working on the Judiciary Committee, he wrote decisions for the Board of Immigration Appeals for twenty years. He also has been a policy advisor for the DHS Office of Information Sharing and Collaboration under a contract with TKC Communications, and he has been in private practice as an immigration lawyer at Steptoe & Johnson.