

States Adopt Patchwork of Immigration Laws in Absence of Comprehensive Federal Strategy

Summary

Calls for Congress to develop a comprehensive immigration reform strategy continue to go unanswered. The delay in congressional action is resulting in minimal congressional activity, increased efforts by the federal government and a “patchwork” system where individual states create their own laws.

Pending Federal Legislation

Employment-Based Visas

The U.S. House of Representatives-passed bipartisan legislation eliminates the existing per-country quotas on the number of employment-based visas. Current law limits any one country to 7% of immigration visa quotas, causing enormous backlogs for legal immigrants from countries like India and China that provide the United States with large numbers of employer-sponsored immigrants.

The bill also changes family-based visa limits from 7% per country to 15% per country, an adjustment that could slightly shorten the backlog for permanent residents and naturalized citizens, particularly from Mexico and the Philippines, trying to reunite with their loved ones. The legislation does not add to the total number of available visas.

Executive Branch Actions

Immigration and Customs Enforcement (ICE)

In August, the Obama administration announced it would formalize its process of prioritizing its immigration enforcement, focusing on removing persons who posed a national security or public safety threat. The list of priorities goes on to include, among others, persons who have repeatedly entered the country illegally and persons who recently entered the country illegally. When considering whether to prosecute, officers from Immigration and Customs Enforcement (ICE) are directed to consider such factors as length of residence in the United States, whether a person was brought to the United States as a child, and whether the person or person’s spouse is pregnant or nursing.

This process is being applied to a backlog of 300,000 cases in the immigration courts. Persons low on the priority list may have their cases administratively closed, while cases high on the list can be more expeditiously moved through the system. The guidelines also are meant to guide ICE in deciding who to pursue going forward.

Employer Audits—ICE Mutual Agreement between Government and Employers (IMAGE) Program

The Obama administration has stepped up employer audits under the ICE Mutual Agreement between Government and Employers (IMAGE) program. The program is a voluntary immigration enforcement program where companies open their books to the scrutiny of federal agents. To participate, employers must meet several requirements: enroll in the federal E-Verify program; submit to an ICE audit of their I-9 forms, which new employees complete, and related documents; establish a written hiring and employment verification policy that includes a yearly internal audit; and sign a partnership agreement with ICE.

The Obama administration has cracked down on employers as part of its immigration enforcement policy, but officials have emphasized employer audits more than the high-profile workplace raids done during the Bush administration. In fiscal year 2011, the agency conducted 2,496 I-9 audits, up from 2,196 the previous year and far above the 503 in the 2008 fiscal year. ICE initiated 3,291 worksite enforcement cases in fiscal year 2011, versus 1,191 in fiscal year 2008.

The IMAGE program began in 2006 and continued in its original form through July 2011, when it had 117 members. The agency recently simplified the program’s requirements and began an aggressive outreach, adding 22 new companies since July 2011. It appears a key reason for recent interest in the program is the rise in enforcement actions.

State Activity

Legislative

Governor Edmund G. Brown Jr. signed the Employment Acceleration Act, which allows local governments to use E-Verify for their own employment purposes, but prohibits them from imposing the requirement on businesses that contract with them or, as five cities now do, making it a condition for obtaining or maintaining a business license.

Initiative

A proposal called the California Opportunity and Prosperity Act (COPA) has been filed with the Attorney General's Office to establish a program for registering illegal aliens in California and direct the Governor to request that the President, ICE, and other federal agencies not enforce immigration laws against those enrolled.

COPA does this by enacting a five-year pilot, self-financed program in which participants gain entrance by meeting certain thresholds.

The participants are undocumented California residents who pay state income tax with a federal Individual Taxpayer Identification Number (ITIN) and can meet the following thresholds:

- Have no felony convictions and are not suspected terrorists;
- Know or are learning English;
- Pay a processing fee and provide a photo;
- Are not public charges; and
- Have lived in California since before January 1, 2008.

COPA participants must continue to use a federal ITIN to continue paying income taxes and pay an annual renewal fee to remain in the program.

COPA directs California's Governor to petition the President and other federal agencies to:

- Provide relief and/or exemptions from federal immigration enforcement actions against COPA members and their families; and
- Decriminalize employment of COPA members.

Litigation

Alabama

On October 14, 2011, the 11th Circuit Court of Appeals put on hold two more provisions of Alabama's new anti-immigrant law, which went into effect at the end of September 2011. No decision on the merits has been reached in any of the various lawsuits that have been filed against the state.

The Appeals Court ruled to block a provision that required school districts to determine the immigration status of students and their parents, and a provision that made it a state crime for undocumented immigrants not to carry registration documents.

A district court judge previously blocked, among other provisions, one that outlawed harboring or transporting undocumented immigrants and another making it a crime for undocumented immigrants to solicit work.

Among the provisions that have not been blocked are:

- The "papers please" provision—requiring law enforcement officers to determine the immigration status of persons who are stopped, detained or arrested whom the officers "reasonably suspect" are in the country illegally;
- A provision making it a felony for undocumented immigrants to enter into a business contract with the state; and
- A provision barring courts from enforcing a contract involving an undocumented immigrant.

Last December, the U.S. Supreme Court announced it will review the U.S. Department of Justice challenge to Arizona's immigration law, SB 1070.

CalChamber Position

There should be one national program implementing immigration policy that pre-empts all state and local programs, and reform legislation should be comprehensive and adequately funded.

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