

## MEMORANDUM

**To:** U.S. Programs Board  
**From:** Maria Teresa Rojas  
**Date:** February 13, 2010  
**Subject:** **Comprehensive Immigration Reform Update**

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We are facing a decisive moment for immigration reform this year. The board dinner conversation scheduled for Feb. 23 is designed to give you an opportunity to talk with the leadership of the *Reform Immigration FOR America Campaign (RIFA)*. OSI and its sister foundation, the Foundation to Promote Open Society, have previously supported the work of the Campaign and other organizations advocating for immigration reform strictly in accordance with the regulations applicable to private foundations under the US Internal Revenue Code. The information the RIFA Campaign leaders will present at the dinner will give the Board context for the continuation of this work. I provide here some background information for that conversation on the current prospects for immigration reform and the work of the Campaign. As in the past, all support for the Campaign from OSI and related entities will be provided in strict compliance with the regulations applicable to US private foundations, and thus no such support will be earmarked for lobbying activities.

### **Status of Immigration Reform**

Based on the best knowledge and analysis from respected sources—both at OSI and inside the beltway—there are strong indicators that immigration reform is still possible in early 2010.

Immediately after the Massachusetts special election, the outlook did not seem promising. However, while some thought the President would stay as far away from the immigration issue as possible in his State of the Union address, he did mention the subject, even if only briefly, and Administration officials quickly reaffirmed their commitment following the President's address.

Equally, if not more importantly, Senator Graham continues to work with Senator Schumer on a bi-partisan agreement, and he continues to express his support for immigration reform. Several of his fellow Senate Republicans, including Lugar, Voinovich, and likely Snowe, Collins, and McCain are also prepared to support legislation. Schumer and Graham are expected to introduce a bill that has strong bipartisan support by late March, with hearings being held shortly thereafter. Rep. Luis Gutierrez has already introduced an immigration reform bill in the House that is widely supported by immigrant rights advocates. Their goal is to move a bill through both legislative bodies by the end of June.

Another significant factor is the support from many businesses, particularly in the high-tech and agricultural sectors. Unlike climate change, health care and financial regulatory reform, immigration reform has significant corporate support.

In addition, the threat of alienating the Latino community, and losing large swathes of their votes, is influencing both Democrats and Republicans to support immigration reform.

Finally, there is a vast social movement powering the effort for reform. The immigrant rights movement put millions of people on the streets in 2006, and plans are in the works for major mobilizations this year. The intensity of support in immigrant communities—and the capacity to mobilize at scale—is greater than the support or mobilization capacity for any other issue on the national agenda.

Immigration advocates and their supporters are not blind to the many obstacles that exist. The RIFA Campaign leadership describes these as “a crowded Senate calendar, the challenge of positioning immigration as part of an economic recovery strategy rather than as irrelevant or harmful to job creation, and not least the ‘fear factor’ about doing anything big that has swept through Democratic ranks in the wake of the MA special election.”

There is a lot at stake here, as the RIFA Campaign recently reported: “Through a legalization program that would make all workers and employers taxpayers, the nation would benefit from \$1.5 trillion in additional GDP over 10 years and the creation of 750,000 – 900,000 jobs due to increased consumer spending. Without reform, mass deportation will lead to \$2.6 trillion in lost GDP over 10 years, not counting the cost of actual deportation: a \$4 trillion swing.”

Based on information from the White House, Department of Homeland Security and Congressional leadership, advocates have identified the following policy fault lines:

1. **Legalization:** Concepts have surfaced that would require immigrants seeking to legalize their status to plead guilty to a criminal offense that would be expunged from their record after payment of a fine and completion of community service. There is strong opposition to this proposal on many fronts.
2. **Family Immigration:** In order to clear the current backlog of applications, tradeoffs being considered include freezing family categories for several years. There continues to be discussion of imposing a point or merit-based system in lieu of the current family and/or employment-based visa categories, thus eliminating long-standing immigration priorities and values for family reunification.
3. **Future Flow:** The challenging economic environment immigration reform faces is exacerbated by tension between organized labor and business interests. Labor favors future flow of work-based immigration controlled by a commission that would base visa numbers on labor market data. Business would like economic needs to drive employment visa numbers, and is skeptical a commission would include leadership friendly to their interests. Furthermore, the controversy of guest worker visa programs remains an issue as many opponents believe all immigration should be temporary, at best.

4. **Border and Interior Enforcement:** Allies on the border (elected officials, law enforcement, faith, business and others) have grown in strength and sophistication, yet further militarization of the border is under consideration. Troublingly, interior enforcement measures may build upon existing electronic verification systems and concepts have surfaced that include national biometric identity cards.
5. **Due Process:** Scenarios may emerge where legislators trade moderate interior enforcement measures for delayed restoration of judicial review and/or discretionary waivers of removal.

### **Status of the Immigration Reform Campaign**

With significant support from OSI and a number of other partner foundations, the immigrant rights field is in the strongest position it has ever been—it has in place for the first time a diverse coalition, a well thought out strategy, and the expertise and reach necessary to achieve reform of the immigration system.

Over the last six months alone, the *Reform Immigration FOR America Campaign*, with funding from multiple sources besides OSI, has achieved new heights:

- Built a national infrastructure of 64 organizers in 39 states, bolstered by nearly 1,000 volunteers trained by the Campaign's unique Movement Building program.
- Conducted frequent public opinion research nationwide with Latino and swing voters to track support for comprehensive immigration reform as well as to test and refine messages. The Campaign's polling shows that comprehensive immigration reform consistently enjoys the support of 80% of voters nationwide and has emerged as a litmus test issue for Latino voters.
- Organized deep political support across labor, business, faith, law enforcement, local elected officials, African American and immigrant constituencies at the local and national levels.
- Organized a national teleconference town hall with members of Congress that engaged 1,000 house parties in 39 states, and dozens of radio markets, reaching over 60,000 listeners.
- Generated over a half million calls and faxes into the White House and Congress.

### **The RIFA Campaign's Plan**

The Campaign has recalibrated its efforts to account for the political realities of the moment. It has put in place a plan involving two phases. Phase I (between now and April) will be focused on ensuring that bi-partisan legislation will be on the Congressional agenda this term. Phase II will focus on building support for reform by the end of June.

Phase I activities consist of the following:

- Dominate the Congressional recess with strategic large scale events and multi-constituency district meetings.

- A faith-led mass mobilization in Washington, DC in March and activism that helps to build the immigration movement in general. For example, urging people to attend a rally or write letters to oppose the anti-immigrant efforts of Joe Arpaio or workplace raids.
- Identify and amplify “game changers”: Mayor Bloomberg, law enforcement, business leadership and other moderate/conservative and independent voices.
- Use earned media outlets to get non-traditional spokespeople into mainstream and new media.
- Re-energize efforts to marginalize the opposition. Generate research and reports on subjects such as analyses of the economic impact of immigrants, the cost to families and society of separating families as a result of immigration policy, etc.

Recognizing that immigration reform increasingly needs to be viewed as a mainstream issue, the RIFA Campaign also will intensify the work that has gone into cultivating and deepening support from the faith community, law enforcement, local elected officials, and from African-American leaders.

Regardless of the immediate outcome, the nature of the Campaign is such that all of these activities will leave in place an infrastructure that will serve the immigrants’ rights community for years to come.

### **Administrative Advocacy Developments**

In closing, I would like to highlight that parallel to the legislative reform efforts, immigrant advocates have been making progress in influencing administrative rulemaking at the federal level. Significant changes include:

- *Right to Counsel:* Attorney General Eric Holder recently overturned a Bush Administration ruling that immigrants in removal proceedings do not have a right to counsel at their own expense. This will make it much easier now for immigrants to appeal their removal orders based on ineffective legal counsel.
- *Detention:* DHS has announced a series of reforms, including expanding the use of alternatives to detention, detaining immigrants in facilities that are appropriate to the risk they represent, improving medical care for detainees, and increasing the oversight of contracted detention centers.
- *No-Match Rule:* The Obama Administration rescinded a regulation that directed employers to take certain steps, including discharging workers, if they receive a letter from the Social Security Administration stating that its records do not match the information submitted by an employee.
- *Raids:* The Administration has prioritized the investigation and prosecution of employers who knowingly hire undocumented workers, and eliminated arrest quotas that led to large-scale enforcement raids. Still, significant troubling practices remain, such as the expansion of programs that utilize local law enforcement agencies to help with immigration enforcement.

## Memorandum

To: George Soros and Aryeh Neier  
cc: Ann Beeson, Steve Rickard, Mort Halperin, and Wendy Patten  
From: Nancy Chang, National Security and Human Rights Campaign Manager, and Maria Teresa Rojas, International Migration Initiative Director  
Date: February 11, 2010  
Re: Possible National Biometric Identification Card Proposal as Part of Comprehensive Immigration Reform

We write to follow up on our December 17 Seize the Day call discussion concerning efforts that are underway to block the institution of a national biometric identification card as a condition of comprehensive immigration reform (CIR).

On November 6, the National Security and Human Rights Campaign and the Immigrant Rights Initiative convened two dozen of the nation's leading privacy experts and immigration advocates for an off-the-record moderated discussion at OSI's DC office. Our goal was to ensure that the privacy rights community and the immigrant rights community – two groups that receive significant support from US Programs but rarely interface with one another – share information and strategies to avoid the loss of privacy and risk to information security that would result should Senator Charles Schumer carry through on his plan to include a national biometric identification card system as part of CIR legislation. In public and private comments, Schumer has repeatedly stated that the path to earned legalization for the 12 million undocumented persons currently in the United States depends on stopping future illegal immigration through the enrollment of all U.S. workers, citizens and non-citizens alike, in a biometric-based national identification card system, and then barring employers from hiring workers not enrolled in this system.<sup>1</sup>

The convening participants were briefed by three privacy experts – Chris Calabrese of the ACLU Washington Legislative Office, Tyler Moran of the National Immigration Law Center, and Jim Harper of the Cato Institute – who sternly warned of the dangers that a national biometric identification card system would pose:

- Fingerprinting 150 million citizen and non-citizen workers would create both a political and a logistical nightmare.
- The infrastructure to build such a system does not yet exist. As a result, the combined cost of a such a system to government, to the employees who would be required to take time off from work in order to apply for cards and verify their identity, and to the employers who would need to acquire access to specialized card reading equipment in order to verify the identify of prospective employees, would be astronomical

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<sup>1</sup> This memo focuses on only one of a number of troubling provisions that Schumer views as central to securing bipartisan support for CIR – a biometric national identification card system. Of greater and more immediate concern to the immigrant rights community is Schumer's support for the imposition of criminal penalties on undocumented immigrants as a condition of legalization.

- Nor does the technology exist to build a fool-proof system that can ensure the accuracy and safety of the huge volume of private information such a system would collect, or to guard against identity fraud. If a massive, centralized database were to be corrupted or fail, the results could be catastrophic.
- As was the case with the Social Security card, the uses for a national biometric identification card can be expected to extend far beyond its original purpose and to serve as a universal identifier. Because it will be digitalized, the card could be used to track in real time the movement, activities, preferences, and religious and political leanings of all American workers, and vast troves of personal information could be shared inappropriately and improperly used as the basis for discriminating against specific individuals and classes of individuals.
- The system would lead to the marginalization of undocumented immigrants and citizens who have fallen through the gaps.

A candid and constructive exchange of information followed these briefings. The immigration rights advocates explained that the threat of a national biometric identification card was one of several serious CIR-related concerns on their radar screen. While no consensus emerged on the best way to move forward, both communities expressed appreciation for the opportunity to meet with and learn from the other and in continuing the discussion.

As Congress decides the fate of health care reform in the wake of the January special senatorial election in Massachusetts, advocates believe that Senator Schumer will wait until March to introduce a bipartisan comprehensive immigration reform bill, and that the bill will likely include a national biometric identification card provision.<sup>2</sup> While the Senate will be taking the lead role in shepherding immigration reform legislation through the Congress, a House immigration reform bill that was introduced in December presents a potentially viable alternative to Schumer's vision. The Comprehensive Immigration Reform for America's Security and Prosperity Act of 2009 ("CIR ASAP Act") (H.R. 4321), would expand e-Verify, the electronic verification system currently used for federal employees, to all American workers. While a national e-Verify system is not without risk to privacy and security, the degree of risk is contained by virtue of the fact that e-Verify relies on neither biometric fingerprinting nor an identification card.

At the request of the National Security and Human Rights Campaign, the Center for Democracy and Technology (CDT), one of the campaign's grantees, has been reaching out to a number of economists to determine what efforts are underway to study of the costs of a national biometric identification card system. Last week, CDT was told on a confidential basis by a reliable source in the Department of Homeland Security that the Office of Management and Budget has completed a study that estimates the cost of implementing a national biometric identification system at a staggering \$1 trillion. CDT was told that the White House does not intend to make this study public, but CDT expressed hope that the Administration would change its mind should it become strategic to release the study. It should be noted that the OMB study was a "quick and dirty" cost estimate, and not a fully developed cost-benefit analysis that comprehensively

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<sup>2</sup> Confidentially, our understanding is that the Administration is privately voicing objections to the biometric proposal to key members of Congress, citing its enormous cost, as well as the controversy and delay it would likely generate.

evaluates and weighs the security threats posed by risk of breach, attack, and insider abuse and misuse of information collected by the system, the cost of mitigating these threats, the potential benefits of the system such as an improved ability to enforce immigration laws in the workplace, and plausible alternatives such as the expanded e-Verify system per the CIR ASAP bill or a hardened Social Security card or drivers license.

We will continue to monitor developments and provide updates as warranted. We would also be happy to answer any questions that you that might have.