



Immigration Reform and the Rule of Law

Testimony Before the Border Security and Comprehensive Immigration Reform Council

Tom Jawetz, vice president for Immigration Policy at American Progress, testified before a field hearing on immigration reform and border security in Philadelphia on February 11, 2019.

Senator Casey and members of the Pennsylvania congressional delegation, thank you for inviting me to testify before you today on this important topic. My name is Tom Jawetz, and I am the vice president for Immigration Policy at the Center for American Progress. American Progress is the nation's foremost progressive think tank dedicated to improving the lives of all Americans through bold, progressive ideas, as well as strong leadership and concerted action.

Over the past two years, attacks on immigrants, refugees, and asylum seekers—including children—have been a constant and defining feature of the Trump presidency. Few people remember that three of the five executive orders issued by the president during his very first week in office addressed the issue of immigration. From the chaos of the Muslim ban at the end of the first week of Trump's administration and the discriminatory treatment that continues to this day;¹ to the decision to eliminate protections for more than 1 million people currently protected by Deferred Action for Childhood Arrivals (DACA) and Temporary Protected Status (TPS);² to the separation of at least 2,700 children from their parents at the border and likely thousands more;³ to the decimation of the U.S. Refugee Admissions Program and the voluntary agencies entrusted to provide reception and integration services;⁴ to the ongoing attacks on asylum seekers at the southwest border;⁵ to the deaths of two children in U.S. Border Patrol custody in December 2018—the first such deaths in a decade,⁶ the administration has made targeting immigrants and refugees its signature priority.

These attacks hit particularly close to home here in Pennsylvania, which is home to roughly 170,000 undocumented immigrants.⁷ To provide one example of how the Trump administration is tearing apart families and communities, in January 2018, U.S. Immigration and Customs Enforcement (ICE) arrested Jose “Ivan” Noe Nuñez Martinez. Nuñez Martinez had been living in the United States for 17 years when

he and his husband went to what they believed would be a marriage interview at the Philadelphia U.S. Citizenship and Immigration Services office. Rather than being able to move forward with his life and adjust his status to that of a lawful permanent resident, Nuñez Martinez was thrown in detention.⁸ Last year, ProPublica and *The Philadelphia Inquirer* found that the “Philadelphia ICE field office arrests more immigrants without criminal convictions than any other ICE region.”⁹

These attacks on Pennsylvanians tear apart families and communities and work against the very premise of American greatness that President Trump purports to uphold.

The false dichotomy

As we work to combat this enforcement overdrive, I am constantly struck by a serious flaw in how the immigration debate is framed. All too often, we are presented with a false choice between the United States as either a nation of laws or a nation of immigrants. Faced with this dichotomy, the pro-immigrant community has essentially lined up over the years on the side of being a nation of immigrants, while immigration restrictionists—the people pushing for evermore expansive and aggressive enforcement—have claimed to stand on the side of being a nation of laws. Put that way, I think it is clear that the way the debate is framed and the way the conversation has developed is not terribly fair to the pro-immigrant side. Importantly, I also think it is horribly inaccurate.

The reality is that these ideals are not irreconcilable and are, in fact, mutually supportive of one another. Our nation’s rich immigrant history must be coupled with an immigration system—a system of laws—that truly works. That is not what we have today.

Our current immigration system does not work for families who are trying to reunite but face wait times that can last many years, or even decades.¹⁰ It does not work for businesses that must meet the needs of American consumers and get the workers they need while also honoring workers’ rights.¹¹ It does not work for intending immigrants—laborers, entrepreneurs, and others—who want to play by the rules, earn a good living, and give their children a shot at a brighter future.¹² These are values that we celebrate as undergirding the American dream. Our current system does not work for the American public, who rely upon the economic, social, and cultural contributions of immigrants in all aspects of our lives.¹³ Finally, it does not work for America’s future. According to a 2017 study by the National Academies of Sciences, Engineering, and Medicine, virtually all of the growth in our working-age population over the past decade is attributed to immigrants and their children. In the decade to come, the working-age population in this country—the very group whose contributions to the social safety net will be relied on as Baby Boomers increasingly leave the workforce—would decrease by more than 7 million people if not for the inclusion of immigrants and their children.¹⁴

Unfortunately, the fact that our system of laws has not kept pace with the legitimate needs of our country has not created enough pressure to get badly needed reform enacted into law. Instead, it has simply resulted in years of “immigration outside the law,” as Professor Hiroshi Motomura of the UCLA School of Law has written.¹⁵ There is no clearer evidence of this than the fact that nearly 11 million undocumented immigrants are living in the country today, almost 8 million of whom are in the workforce. Two-thirds of adult undocumented immigrants have lived here for longer than 10 years, and the average adult for nearly 15 years.¹⁶ In our own little ways—whether as employers, consumers, or homeowners—each of us has long counted on, and effectively encouraged, the development of this extralegal immigration system. This has allowed us to avoid the negative consequences of truly living within the system we have been left with as a result of prolonged inaction by policymakers.

At the risk of being provocative, the truth is that our arcane immigration system is so broken that it long ago abandoned the right to expect and deserve compliance and respect. That reality helps to explain why restrictionists—when they push constantly for maximum enforcement of a system of laws that everyone recognizes as broken—can talk all day long about the rule of law but are perpetuating a system that necessarily and predictably undermines respect for the rule of law. Only by fixing our immigration system in a manner that aligns with American values and interests, and that truly encourages compliance with the law, can we effectively restore respect for the rule of law.

Restoring the rule of law in our immigration system

So, what would such an immigration system look like? For starters, it would have realistic, evidence-based avenues for legal immigration. Families would be able to stay together, rather than be kept apart due to arbitrary bars to re-entry or enforcement policies based on maximizing deportations. Workers would be able to find legal pathways into the country to fill needed positions, rather than relying on a status quo that effectively offers no line whatsoever for most people to enter the United States legally if they want to come here to work, contribute, and build a better life for themselves and their families. And people in need of humanitarian protection would get fair and efficient adjudication of their claims.

Because the goal of this effort would be to design not only a system of rules that can work, but also one that people respect and believe should be enforced, it is critical that our immigration *enforcement* system also provides fair and just outcomes. So much enforcement today takes place without any real due process; without review by an independent adjudicator; and without the opportunity for an individualized assessment of whether a person should be released from detention or granted relief from removal.

For years, ICE officers and U.S. Customs and Border Protection personnel—frequently without intervention by an immigration judge—have issued the large majority of all removal orders.¹⁷ And when people do come before immigration judges—judges who answer directly to the attorney general and who lack the most basic elements of impartiality and judicial independence—they are frequently given one-size-fits-all penalties of detention and deportation without an opportunity for discretionary relief.

The immigration court system should operate more like a true court, and immigration judges should be imbued with the same kind of independence and commitment to delivering justice as true judges.¹⁸ People forget, but immigration judges are so named because the commissioner of immigration and naturalization, under the U.S. Department of Justice, issued a regulation in 1973 saying that “special inquiry officers” should also be known as “immigration judges.”¹⁹ Immigration courts have few of the trappings of what we commonly think of as essential to a judicial system, such that 3-year-old children can be expected to appear in court without counsel unless they can secure an attorney at no expense to the government.²⁰

Our immigration system is broken, and everyone knows it. Past administrations have tried to accommodate for this fact by adopting policies to guide the exercise of prosecutorial discretion and limit routine enforcement actions at sensitive locations such as schools and places of worship. These policies were motivated by a desire to prioritize resources in a smart and sensible way, by focusing first on serious threats to our communities and seeking to minimize the chilling effects that routine immigration enforcement at hospitals or churches might have on these important institutions in our society. One of the first actions of the Trump administration was to eliminate the very notion that enforcement should be guided by such priorities.²¹ Civil immigration-related arrests under Trump have increased dramatically, driven in part by three times as many arrests of people with no criminal record.²²

Enforcing a broken system in this wanton and senseless manner will not make the system work any better. It will not—and for all of our sakes, had better not—counter the legitimate forces that have led to immigration outside the law all of these years, which have contributed to this vibrant, diverse, and incredible country that I am proud to call my home. Instead, it will have precisely the effect that we are observing today: It will expose the cruelty of tearing parents away from their children, teachers away from their students, and longtime pillars of the community away from their friends and neighbors.²³ Furthermore, it will slowly continue to erode respect for the rule of law itself.

The path forward

What gives me hope—what allows me to believe that there is a way forward today and in the years ahead—is that these relentless attacks on immigrants and refugees have provoked a visceral, negative reaction among the American public. According to Gallup polling, a record-high three-quarters of all Americans now say that immigration is a good thing for the country—the highest level of support in decades.²⁴ The share of the American public that believes the level of immigration to the United States should increase or stay the same is at the highest level recorded since Gallup first began asking the question almost 55 years ago in 1965.²⁵ Put simply, the American public wants real solutions.

Over the next two years, I hope we can get back to having a conversation about how to reform our immigration laws, including by providing a path to citizenship for millions of undocumented immigrants who are ingrained in our communities and are so important to our shared success.

The first step along that path is for Congress to enact permanent protections for Dreamers and people with Temporary Protected Status. This includes nearly 700,000 DACA recipients and more than 300,000 TPS holders,²⁶ whose lives have been thrown into limbo due to the actions of the Trump administration. Together, DACA recipients and TPS holders also live in the same households as nearly 500,000 children who are U.S. citizens.²⁷

This issue is particularly salient for Pennsylvania, home to approximately 2,900 TPS beneficiaries from El Salvador and Haiti. An additional 6,800 individuals in Pennsylvania live in families with these TPS holders, including 3,500 U.S.-citizen children.²⁸ These individuals make major contributions to the state, holding \$109.8 million in spending power and paying \$27 million in federal taxes and \$15.2 million in state and local taxes annually.²⁹ Pennsylvania is also home to nearly 5,000 young immigrants who actively maintain their DACA status.³⁰

Putting Dreamers and TPS beneficiaries on a pathway to citizenship will undo at least a small piece of the damage that the Trump administration has done on immigration issues since taking office. For Pennsylvanians who have lived with the damage the administration has inflicted on the state's families and communities, this small step cannot wait another day.

Conclusion

Right now, the country is having a conversation about what it means to be an American and who belongs here. For the first time, certainly in my professional experience, we are all being given the opportunity to see what it looks like when people who have long existed on the anti-immigrant fringe are given the keys to the castle and allowed to set policy. This presents new and painful challenges every single day, but it also represents an enormous opportunity to use this heightened awareness of the contributions of immigrants throughout our society to push for meaningful change.

Over the next two years, Congress must conduct badly needed oversight to educate the public about what the administration is doing, identify solutions, and raise urgency. Congress also must pass legislation to ameliorate some of the damage being done and lay the groundwork for an immigration system that truly lives up to our nation's values and ideals. In the weeks and months ahead, that should include House passage of legislation to provide permanent protections for Dreamers and TPS holders. There is no time to lose.

Endnotes

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