

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SJR 2 (Hueso)
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SUBJECT

Immigration reform

DIGEST

This resolution urges the Congress of the United States to work with President Joseph R. Biden to pass comprehensive immigration reform guided by empathy, inclusion, and opportunity.

EXECUTIVE SUMMARY

Between 10.5 and 11 million undocumented immigrants live in the United States, with approximately one quarter living in California. These immigrants are an integral part of California, and the country's, communities, families, and economies. Yet the federal government has not passed comprehensive immigration reform in 30 years, leaving many undocumented Californians with no path to citizenship. Without such a path, California's undocumented immigrants are at a high risk of exploitation and unlawful treatment in housing, jobs, and society at large.

This resolution, on behalf of the California Senate and Assembly, calls on Congress to work with President Joseph R. Biden to enact comprehensive immigration reform, developed with empathy and inclusion, with an emphasis on (1) maintaining family structures, (2) creating a pathway to citizenship for DACA recipients, (3) expanding eligibility for asylum seekers, (4) upgrading the current visa programs in order to have a legal workforce and a system that better enforces labor protections, (5) eliminating the term "alien" from all immigration laws, and (6) upholding due process as well as the inherent rights of all immigrants.

This resolution is sponsored by the author and is supported by Disability Rights California. There is no known opposition.

PROPOSED CHANGES TO THE LAW

Existing federal law:

- 1) Provides that the federal government has the exclusive authority to regulate immigration and naturalization. (U.S. Const., art. I, § 8, cls. 3 & 4.)
- 2) Establishes the Deferred Action for Childhood Arrivals program (DACA), which allows some undocumented immigrants who came to the United States as children to receive a renewable two-year period of deferred action from deportation and become eligible for a work permit in the United States. (Office of the President of the United States, Memorandum, *Preserving and Fortifying Deferred Action for Childhood Arrivals (DACA)* (Jan. 20, 2021), 86 Fed. Reg. 7053 (Jan. 25, 2021); Dept. of Homeland Security, Memorandum, *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children* (Jun. 15, 2012).)
- 3) Establishes the Temporary Protected Status program (TPS), which is time-limited authorization to reside and work in the United States while their countries of origin recover from the impact of major natural disasters or extreme civil conflict. The United States government may extend a TPS authorization for additional intervals if the recipient's country of origin has not recovered sufficiently from the major natural disaster or extreme civil conflict to permit a safe return. (8 U.S.C. § 1254a.)
- 4) Establishes the Deferred Enforced Departure program (DED), which permits the President of the United States, under their power to conduct foreign relations, to defer removal of residents of a particular country through an executive order or presidential memorandum. Unlike TPS, DED does not confer a pathway to citizenship, but individuals designated for DED may request employment authorization. (See U.S. Const., art. I, § 8, cl. 3.)
- 5) Provides that the Secretary of Homeland Security or the Attorney General may grant asylum to an immigrant who has applied for asylum and who is determined to be a refugee because they are unwilling or unable to return to their country of origin because they have been persecuted or have a well-founded fear of persecution on the basis of specified characteristics or activities. The President of the United States has the authority to set the number of refugees who may be admitted to the United States each year, based on the President's determination of what is justified in light of humanitarian concerns and the national interest. (8 U.S.C. §§ 1101(a)(42), 1157(a)(2), 1158.)

Existing state law:

- 1) Declares that immigrants are valuable and essential members of the California community and points out that almost one in three Californians is foreign-born

and one in two children in California has at least one immigrant parent. (Gov. Code § 7284.2(a).)

This resolution:

1) Makes the following legislative declarations:

- a) There are an estimated 11 million undocumented immigrants living in the shadows in the United States, including millions of children brought to this country undocumented who have grown up here, with 2.5 million calling California home.
- b) One in ten California workers is undocumented, and a logical and streamlined pathway to citizenship would stimulate the economy by allowing undocumented immigrants to get college degrees, buy homes, start new companies, and create legal, tax-paying jobs, finally affording them a chance at the American Dream.
- c) The United States Congress last enacted major immigration reform more than 30 years ago.
- d) Since that time, fragmented attempts at immigration reform have failed to create the rational and effective systems needed to maintain international competitiveness. It is vital that immigrant students who receive Doctorates or Masters degrees from American universities be given the opportunity to contribute to the economy after receiving an American education.
- e) Our national interests and security are not well served by an outdated, inefficient, and slow-moving immigration system. Patchwork attempts to mend its deficiencies undermine our potential for prosperity and leave us vulnerable and unable to meet the needs of the modern world.
- f) Immigrants are a vital and productive part of California and the country's economy and are active in a variety of industries, including technology and agriculture, and they represent a large share of our new small business owners, creating economic prosperity and needed jobs for everyone.
- g) More than 16 million Americans share a home with at least one family member who is undocumented. Keeping families, business owners, and hard workers in the shadows of society serves no one, and fragmenting family units is detrimental to everyone.
- h) Comprehensive immigration reform should include a reasonable and timely path to citizenship for undocumented immigrants who are already living and working in the United States, including the over 640,000 DACA recipients, and should expand asylum eligibility for those fleeing dangerous environments hoping for safety and opportunity.
- i) President Joseph R. Biden unveiled a comprehensive immigration bill in the first week of office that focuses on maintaining families together while valuing immigrants' contribution to our nation, emphasizing the need for a timely and nuanced response to our currently defective immigration system. President Biden's emphasis presents a monumental opportunity to finally resolve a longstanding issue.

- j) Language is critical to how one understands and perceives immigration issues, and President Joseph R. Biden’s immigration bill includes a provision to replace the term “alien” with “noncitizen” in United States immigration laws, showcasing the importance of encompassing reforms that model empathy in their actions and dignity in their language.
- 2) Resolves by the Senate and the Assembly of the State of California, jointly:
 - a) That the Legislature urges the Congress of the United States to work with President Joseph R. Biden to pass comprehensive immigration reform guided by empathy, inclusion, and opportunity, as described in this resolution and in President Biden’s immigration plan.
 - b) That immigration reform should include an emphasis on (1) maintaining family structures, (2) creating a pathway to citizenship for DACA recipients, (3) expanding eligibility for asylum seekers, (4) upgrading the current visa programs in order to have a legal workforce and a system that better enforces labor protections, (5) eliminating the term “alien” from all immigration laws, and (6) upholding due process as well as the inherent rights of all immigrants.
 - c) That the Secretary of the Senate transmit copies of this resolution to the President and the Vice President of the United States, to the Speaker of the House of Representatives, to the Majority Leader of the Senate, and to each Senator and Representative from California in the Congress of the United States.

COMMENTS

1. Author’s comment

According to the author:

Currently, 11 million immigrants live in the United States. About 2.5 million immigrants call California home. They have been living in, working in, and giving back to this great country for decades in spite of outdated laws that have created a patchwork system failing to address the needs of this large population. Rather than keep immigrants in the shadows, it is vital that we work to amend our current system so that we can help integrate them into our economy and society. Because President Biden has revealed his plan for comprehensive immigration reform, emphasizing the need for new legislation to address the current system, we now have a vital opportunity to address this issue after decades of patchwork. With an effective, streamlined, and logical pathway to citizenship, immigrants can finally have the same opportunities to earn an education, work tax-paying jobs, stimulate the economy, and pursue the American Dream.

2. This resolution urges the United States Congress to work with President Joseph R. Biden to enact comprehensive, compassionate immigration reform

The United States has more immigrants than any other country in the world: nearly 45 million people living in the U.S., or 13.7 percent of the population, were born in another country.¹ Approximately one quarter, or 10.5 million, of those immigrants are undocumented.² California has the largest immigration population in the country, with approximately 10.7 million residents born outside the U.S.³ Recent estimates suggest that less than a quarter, or 2.2 million, of those immigrants are here without documentation.⁴ Although many undocumented immigrants who work pay state, federal, and Social Security taxes, undocumented immigrants – including DACA recipients – are generally ineligible for most federal benefits.⁵

Simply put, California would cease to function without its undocumented immigrant residents – a reality made even more stark by the COVID-19 crisis. Approximately 78 percent of employed undocumented workers work in sectors designated as “essential” or “critical” as defined by the Department of Homeland Security (DHS) Cybersecurity and Infrastructure Agency.⁶ Despite their essential contributions during the global pandemic, California’s undocumented workers are paid lower as compared to their documented counterparts and have not been eligible for many assistance programs provided to other residents, including unemployment benefits and federal coronavirus relief.⁷ Furthermore, many industries that depend on undocumented labor, in part as a means of skirting wage, benefits, and safety laws – such as the Los Angeles garment industry – have become even more abusive and unsafe during COVID-19.⁸

For many of California’s undocumented residents, California is the only home they have ever known. An estimated 222,795 DACA beneficiaries – “Dreamers” – live in

¹ Budiman, *Key findings about U.S. immigration*, Pew Research Center (Aug. 20, 2020), <https://www.pewresearch.org/fact-tank/2020/08/20/key-findings-about-u-s-immigrants/> [last visited Mar. 20, 2021].

² *Ibid.*

³ *Ibid.*

⁴ Pew Research Center, *U.S. unauthorized immigrant population estimates* (Feb. 5, 2019), <https://www.pewresearch.org/hispanic/interactives/u-s-unauthorized-immigrants-by-state/> [last visited Mar. 20, 2021].

⁵ National Immigration Forum, *Fact Sheet: Immigrants and Public Benefits* (Aug. 21, 2018), <https://immigrationforum.org/article/fact-sheet-immigrants-and-public-benefits/> [last visited Mar. 20, 2021].

⁶ Hinojosa & Robinson, *Report Essential but Disposable: Undocumented Workers and Their Mixed-Status Families*, UCLA North American Integration and Development (NAID) Center and the Mexican Instituto Nacional de Estadística y Geografía (Aug. 10, 2020), *available at* http://www.naid.ucla.edu/uploads/4/2/1/9/4219226/essential_undocumented_workers_final.pdf [last visited Mar. 20, 2021], at pp. 4, 6.

⁷ *Id.* at pp. 6, 15.

⁸ Segran, *‘I don’t really have a choice’: L.A. garment workers are risking their lives to sew masks*, Fast Company (Jul. 30, 2020), <https://www.fastcompany.com/90531703/i-dont-really-have-a-choice-la-garment-workers-are-risking-their-lives-to-sew-masks> [last visited Mar. 20, 2021].

California.⁹ The modal age at which Dreamers came to the United States is three years old, and the average age is six years old.¹⁰ Nationwide, a large majority of immigrants have lived in the United States for ten years or more.¹¹

In the last 12 years, the federal government has taken an increasingly hostile approach to the undocumented immigrants who make our state's culture, society, and economy richer. President Barack Obama oversaw the greatest number of deportations from the U.S. interior in U.S. history.¹² Under President Donald Trump, the total number of persons deported went down, but the vile, racist rhetoric and the inhumane treatment of immigrants increased exponentially. President Trump started his presidential campaign with baseless, hateful statements about immigrants from Mexico and continued making racist attacks on immigrants throughout his presidency.¹³ His deeds matched his words: one of his first acts as president was to implement a ban on immigration from several majority-Muslim countries;¹⁴ his administration accepted historically low numbers of refugees fleeing persecution in their countries of origin;¹⁵ and he implemented the horrific "family separation" program that tore children from the arms of their parents who were fleeing violence to seek asylum in America.¹⁶ Records suggest over 5,500 children were separated from their families starting in 2017, and, monstrosly, DHS managed to lose track of the parents of 628 separated children.¹⁷ President Trump also attempted to end DACA, but the United States Supreme Court blocked the attempted rescission.¹⁸

⁹ Parlapiano & Yourish, *A Typical 'Dreamer' Lives in Los Angeles, Is From Mexico, and Came to the U.S. at 6 Years Old*, New York Times (updated Jan 23, 2018), available at <https://www.nytimes.com/interactive/2017/09/05/us/politics/who-are-the-dreamers.html?module=inline> [last visited Mar. 20, 2021].

¹⁰ *Ibid.*

¹¹ Passel, et al., *As Growth Stalls, Unauthorized Immigration Population Becomes More Settled*, Per Research Center (Sept. 3, 2014), <https://www.pewresearch.org/hispanic/2014/09/03/as-growth-stalls-unauthorized-immigrant-population-becomes-more-settled/> [last visited Mar. 20, 2021].

¹² Thomson-DeVeaux, *Will The 2020 Democrats Reject Obama's Immigration Legacy?*, FiveThirtyEight (Jul. 31, 2019), <https://fivethirtyeight.com/features/will-the-2020-democrats-reject-obamas-immigration-legacy/> [last visited Mar. 20, 2021].

¹³ Scott, *Trump's most insulting – and violent – language is often reserved for immigrants*, Washington Post (Oct. 2, 2019), <https://www.washingtonpost.com/politics/2019/10/02/trumps-most-insulting-violent-language-is-often-reserved-immigrants/> [last visited Mar. 20, 2021].

¹⁴ See Exec. Order No. 13769 (Jan. 27, 2017), 82 Fed. Reg. 8977 (Feb. 1, 2017); Exec. Order No. 13780 (Mar. 6, 2017), 82 F.R. 13209 (Mar. 9, 2017); Presidential Proclamation 9645 (Sept. 24, 2017), 82 Fed. Reg. 45161 (Sept. 27, 2017); see also, *Trump v. Hawaii* (2018) 138 S.Ct. 2392, 2423.

¹⁵ Krogstad, *Key facts about refugees to the U.S.*, Pew Research Center, Oct. 7, 2019, available at <https://www.pewresearch.org/fact-tank/2019/10/07/key-facts-about-refugees-to-the-u-s/> [last visited June 30, 2020].

¹⁶ Levin, *'We tortured families': The lingering damage of Trump's separation policies*, The Guardian (Jan. 4, 2021), <https://www.theguardian.com/us-news/2021/jan/04/trump-administration-family-separation-immigrants-joe-biden> [last visited Mar. 20, 2021].

¹⁷ *Ibid.*

¹⁸ *Dep't of Homeland Security v. Regents of the University of California* (2018) 140 S.Ct. 1891, 1901.

President Joseph Biden has begun to roll back some of the Trump administration's worst attacks on immigration. He has ordered the creation of an interagency task force to reunite the families cruelly separated at the border;¹⁹ reinstated DACA;²⁰ pledged to restore and increase the U.S.'s asylum system;²¹ and has proposed legislation that would create a pathway to citizenship for undocumented immigrants.²² At the same time, the change in administration has not erased the humanitarian crises caused by the U.S.'s lack of preparedness to accept asylees: President Biden has been criticized for being slow to respond to an influx of migrants at the border, particularly unaccompanied children, who are being detained in substandard conditions.²³ Yet without action from Congress, President Biden will be unable to put in place a comprehensive immigration reform plan.

The House of Representatives has already passed two important pieces of immigration legislation: a bill offering a pathway to legal status to around one million immigrants who were brought to the United States as children, and a bill creating a similar pathway for farmworkers who have worked in the United States without documentation.²⁴ Unfortunately, these measures may be stalled in the Senate. According to reports, Senate Republicans are threatening to filibuster these measures – thereby preventing them from being brought to a vote – unless the administration also agrees to measures limiting asylum and conducting so-called “rapid deportation” for children and teenagers.²⁵ Moreover, the bills passed by the House of Representatives present piecemeal, not comprehensive, immigration, and would leave many of California's undocumented immigrants – such as the Los Angeles residents who risk their lives sewing masks during the COVID-19 pandemic – with no pathway to citizenship.

¹⁹ See Exec. Order No. 14011 (Feb. 2, 2021), 86 Fed. Reg. 8273 (Feb. 5, 2021);

²⁰ Office of the President of the United States, Memorandum, *Preserving and Fortifying Deferred Action for Childhood Arrivals (DACA)* (Jan. 20, 2021), 86 Fed. Reg. 7053 (Jan. 25, 2021).

²¹ Exec. Order No. 14010 (Feb. 2, 2021), 86 Fed. Reg. 8267 (Feb. 5, 2021).

²² White House Briefing Room, *Fact Sheet: President Biden Sends Immigration Bill to Congress as Part of His Commitment to Modernize our Immigration System* (Jan. 20, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-president-biden-sends-immigration-bill-to-congress-as-part-of-his-commitment-to-modernize-our-immigration-system/> [last visited Mar. 20, 2021].

²³ Sheridan, et al., *What's causing the migrant surge at the border? Poverty, violence and new hope under Biden*, Washington Post (Mar. 18, 2021), https://www.washingtonpost.com/world/the_americas/migrant-surge-border-biden-unaccompanied-minors/2021/03/18/c2a48ab0-87ed-11eb-82bc-e58213caa38e_story.html [last visited Mar. 21, 2021]. Madhani and Long, *Biden is on his heels amid a migrant surge at the border*, SFGate (Mar. 20, 2021), <https://www.sfgate.com/news/article/Biden-is-on-his-heels-amid-a-migrant-surge-at-16040574.php> [last visited Mar. 20, 2021].

²⁴ Fram, *House passed immigration bills for farm workers, 'Dreamers,'* Washington Post (Mar. 19, 2021), https://www.washingtonpost.com/politics/house-oks-dems-immigration-bills-for-dreamers-farm-workers/2021/03/18/e3104e44-884a-11eb-be4a-24b89f616f2c_story.html [last visited Mar. 21, 2021].

²⁵ Kim and Sotomayor, *As house approves 'dreamers' bill, Biden pushes for support amid GOP resistance in the Senate*, Washington Post (March 18, 2021), https://www.washingtonpost.com/politics/biden-immigration-dreamers-daca/2021/03/18/ebe53a16-87f0-11eb-8a8b-5cf82c3dffe4_story.html [last visited Mar. 21, 2021].

In recognition of the need for comprehensive litigation reform, this resolution urges Congress to work with President Biden to pass comprehensive immigration reform as set forth in his bill, and be guided by empathy, inclusion, and opportunity. The resolution further urges that immigration reform should include an emphasis on (1) maintaining family structures, (2) creating a pathway to citizenship for DACA recipients, (3) expanding eligibility for asylum seekers, (4) upgrading the current visa programs in order to have a legal workforce and a system that better enforces labor protections, (5) eliminating the term “alien” from all immigration laws, and (6) upholding due process as well as the inherent rights of all immigrants.

SUPPORT

Disability Rights California

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation:

AB 1096 (Luz Rivas, 2021) removes the word “alien” from California statutes and replaces it with the terms such as “person,” “resident,” “immigrant,” or “permanent resident” as applicable. AB 1096 is pending before the Assembly Judiciary Committee.

AB 937 (Carrillo, 2021) prohibits state and local agencies from arresting or facilitating the arrest, confinement, detention, transfer, interrogation, or deportation of an individual for an immigration enforcement purpose, and repeals measures requiring the Department of Corrections and the Department of Youth Authority to determine whether persons being detained are subject to deportation. AB 937 is pending before the Assembly Public Safety Committee.

AJR 1 (Kalra, 2021) resolves on behalf of the Legislature to call on the United States Congress to abolish ICE, in recognition of ICE’s culture of abuse and participation in deceptive and inhumane practices. AJR 1 pending before the Assembly Judiciary Committee.

Prior Legislation:

ACR 1 (Bonta, Ch. 164, Stats. 2019) condemned regulations adopted by the Department of Homeland Security to prescribe how a determination of inadmissibility for a person who is not a citizen or national is made based on the likelihood that the person will become a public charge and urged the federal government to repeal those regulations.

AJR 11 (Carrillo, Ch. 136, Stats. 2019) urged the President and the Congress of the United States to enact legislation to provide permanent legal status and a path to citizenship for immigrant youths and individuals with Deferred Enforced Departure and Temporary Protected Status.

AJR 9 (Christina Garcia, Ch. 104, Stats. 2019) urged the federal government to stop using ruses against immigrants, revise the tactics used by ICE, cease the unjust detention of undocumented immigrants, end blanket raids against individuals thought to be without documents, and adopt a standard uniform for ICE officers that clearly identifies them as ICE when operating in California.

SJR 1 (Vidak, 2016) would have urged Congress and the President of the United States to work together to create a comprehensive and workable approach to reform the nation's immigration system according to specified principles. SJR 1 died in the Senate Judiciary Committee.

SJR 2 (Vidak, Ch. 23, Stats. 2015) urged Congress and the President of the United States to work together to create a comprehensive and workable approach to reform the nation's immigration system.

SJR 31 (Torres, 2014) would have resolved that the Legislature urged the President and Congress of the United States to adopt immigration policies that ensure that unaccompanied minors receive appropriate child welfare services, legal assistance, and access to immigration protection. SJR 31 died in the Assembly.

AJR 49 (Gonzalez, Ch. 169, Stats. 2014) resolved that the Legislature urged President Barack Obama take executive action to suspend any further deportations of unauthorized individuals with no serious criminal history.
