Chapter 7 | Obama’s Immigration Reform: A Tough Sell for a Grand Bargain

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The United States has always been a nation of immigrants, but in the twenty-first century, the policy debate is about becoming a nation of illegal immigrants. President Obama promised “comprehensive immigration reform,” but he will be judged on how he handled illegal immigration. The challenge is a daunting one. Members of Congress thought they had successfully dealt with it a quarter of a century ago, but the demographic statistics—as well as the legislative record since then—tell a very different story.

The U.S. Department of Homeland Security estimates that about 10.8 million foreigners live in the United States without authorization (Hoefer, Rytina, and Baker 2010). That number is nearly equal to the population of Ohio. It is about one-third of the entire population of all foreign-born in the United States (Passel and Cohn 2011). An international comparison also highlights the scale of the problem: Russia is second only to the United States in numbers of immigrants, but Russia’s total foreigner population, 12.3 million, is comparable to the number of illegal immigrants in the United States (United Nations 2009). The dominant questions in the often very emotional immigration debate are whether and how this massive population should be legalized and what should be done to prevent a new illegal population from developing.

Debate may be too generous a word to describe the discourse: legalization advocates and immigration restrictionists share little common ground. They are not even able to agree on terms. (I use here the more neutral legalization rather than amnesty, and use illegal, unauthorized, and undocu-
mented interchangeably.) Both legalization advocates and immigration restrictionists do agree, however, that the current border control effort fails to achieve its goals (Cornelius and Tsuda 2004). Both sides also agree that most migrants come here to work, and that there is at least some relationship between employers' demand for low-cost, low-skilled labor and the high number of illegal immigrants already here.

For several years, reformers' attempts to deal with the matter have been based on a common model, the grand-bargain approach. That legislative model has its origins, ironically, in one of the great policy failures of American history, the Immigration Reform and Control Act of 1986 (IRCA).

IRCA-style grand bargaining has two defining parts. First is a massive legalization package that would, with various procedures and requirements, move the vast majority of the millions of illegal aliens to permanent legal status. Second is a package of enforcement reforms that would seal the porous border. Although one grand bargain passed in 1986, since then enactment of a bill that satisfies all interests has been maddeningly elusive (Tichenor 2009). The basic dilemma is this: IRCA's failure to seal the border taught restrictionists not to make any more grand bargains. But the more reformers offer to entice the restrictionist side, the more they alienate and anger those fighting for legalization. The result is stalemate.

The long shadow cast by IRCA is not the whole story of the failure of immigration reform to advance during Obama's term, but it is a key factor. I argue here that IRCA led to negative perceptions and meanings of immigration reform—and in particular, mass legalization—that are widespread in Congress and in the electorate, but they work in concert with long-standing negative perceptions of undocumented immigrants. Equally important is the institutional structure of the American government that provides many veto points for highly motivated opponents to stop legislation.

The negative perceptions of legalization and the undocumented and the institutional leverage afforded by multiple veto points help us understand not only the inability of Obama's reform to gain traction, but George W. Bush's immigration reform failures as well. Immigration reform is distinctive from the other reform areas in this volume in that it is not just an Obama goal, or a Democratic goal. Obama's reform is similar to a reform George W. Bush propounded only a few years earlier. However, several factors are distinctive to the Obama presidency that, though not decisive, play a part in thwarting reform. These include the extreme partisanship displayed by Republicans in Congress, the dismal state of the economy, and a contradictory law targeting illegal immigrants in Arizona. These all make reform more difficult—though, as previous failures during the Bush administration showed, they are not essential to blocking reform.

Last are three factors that social scientists usually link to policy change—namely, public opinion, expert ideas, and interest groups—that all play a supporting actor role in the current failure of reform. That is, they work in concert with or are driven by other factors but are not feature actors in this drama.

Potentially much is at stake with immigration reform. There are great concerns about the rule of law, Latino voters, and economic imports. Regarding economics, the complexity of the causal chains makes definitive statements surprisingly difficult. Despite some economic benefits to the status quo on undocumented immigration, costs—real and perceived—help drive the issue. The economist Gordon Hanson (2009) notes that about 50 percent of undocumented immigrants have payroll taxes deducted due to use of fake Social Security numbers. While these funds go to the federal government, costs are mostly borne by cities, counties, and states. Estimates of the precise fiscal impacts vary and depend in part on how they are measured. For example, the sociologists Frank Bean and Gillian Stevens (2003) put the short-term costs of immigration at $200 per household per year nationally and $1,200 in California. However, a Congressional Budget Office report on illegal immigration downplayed the costs to locals, arguing that though illegal aliens impose costs on education, health care, and law enforcement, those costs amount to less than 5 percent of total costs on average. Even in high-immigration areas, in states such as California where costs were in the tens of billions, those costs were still less than 10 percent of total expenditures (Congressional Budget Office 2007). Nevertheless, the perception of unjustified costs creates taxpayer resentment.

Looking at the wage effects, Hanson (2009) argues that illegal immigration redistributes income from low-skilled native workers to employers. It also leads to a net gain in overall income because employers can be more productive, though Hanson estimates that the "immigration surplus" is only 0.3 percent of GDP. Nevertheless, former Federal Reserve chair Alan Greenspan has testified to Congress regarding the employer benefits of immigration in relieving labor supply pressures (Greenspan 2000).

The economist George Borjas (2003) argues that legal and illegal immigration have helped reduce average wages in the United States by 3 percent between 1980 and 2000 and the wages of those without a high school degree by 9 percent. There is also evidence that some workplaces intentionally replaced American workers with immigrants and, in particular, easily exploitable undocumented immigrants (Waldinger and Lichter 2003; Skenetky 2007). This is true in a variety of low-wage jobs, especially meatpacking, where wages and work conditions have plummeted since the 1980s. Although the precise impacts on native black and white workers of displacement by immigrants are not clear, some social scientists argue that immigrant displacement of native black and white workers in some in-
ILLEGAL IMMIGRATION AND THE HISTORY OF POLICY FAILURE

It is a truism that you cannot have undocumented immigrants without immigration control, yet the point is worth making. For much of American history, America's border with Mexico was mostly unmonitored. Mexican migrants tended to move freely back and forth across it, typically to work in agriculture. From World War II to 1964, they also came as part of the Bracero (from the Spanish word for arm) temporary work visa program (Gutiérrez 1997; Massey, Durand, and Malone 2002). Undocumented immigration was in a sense created by the 1965 Immigration and Nationality Act's immigration quotas and the end of Bracero (Jenkins and Prewitt 1977; Martin 2003; see appendix table 7A.1). The law created a limit of 20,000 visas for each country in the Eastern Hemisphere, and an overall quota of 120,000 for the Western Hemisphere. Congress extended the 20,000-visa treatment to each country in the Western Hemisphere in 1976 (Massey, Durand, and Malone 2002; Reimers 1985).

Lacking access to Bracero guest-workers or other immigrant labor, agricultural interests as well as other businesses began to hire undocumented workers. Thus began the new era of illegal immigration: the number of unauthorized migrants swelled, more migrants stayed, and they spread across the United States (Massey, Durand, and Malone 2002; Navarro 2005).

IRCA and the Grand-Bargain Approach

By the mid-1970s, illegal immigrants were moving into jobs in construction, manufacturing, and low-skilled services, taking advantage of the growth of the unsteady, nonunion "secondary" labor market that grew in the wake of deindustrialization and globalization (Piore 1979; Bluestone and Harrison 1982). To deal with the growing problem, task forces under Presidents Ford, Carter, and Reagan, as well as a congressional creation, all advocated some version of the grand-bargain approach that has shaped immigration politics ever since: build a winning congressional coalition by combining border enforcement with legalization (Tichenor 2002; Graham 2003; Zolberg 2006).

Congress eventually responded in 1986 with the Immigration Reform and Control Act. The effort began with notable cooperation across party lines as well as between the House and Senate. Senator Alan Simpson (RWY) and Representative Roman Mazzioli (KD-Y) introduced identical bills in each chamber and held joint hearings.

But the bipartisan bill split both parties. Democrats close to labor unions opposed greater legal or illegal immigration because of the belief that a
greater labor supply drives down wages. Democrats close to Latinos and other immigrants were concerned about discrimination issues and maintaining opportunities for family reunification, and supported more open borders. On the other side, Republicans sympathetic to employer interests in cheap labor sided with Democrats who wanted more open borders. But Republicans tied to social conservatives worried about a loss of law and order, taxpayer subsidies for lawbreaking foreigners, and changes to the national identity and culture. They did not want to reward lawbreakers with job opportunities, access to services, and eventual legal residence (Schuck 1992; Gimpel and Edwards 1999).

Expansionists won an amnesty for about 3 million undocumented persons then in the country and a prohibition of discrimination in employment on the basis of citizenship status. The latter provision was necessary to appease the expansionists because the restrictionists had won a novel control measure: penalties on employers who knowingly hired illegal workers. However, it was very important that an employer was in trouble only if he or she knowingly hired an illegal alien. An illegal immigrant job applicant only had to produce documentation indicating that he or she was legal. It did not have to be good documentation (Gimpel and Edwards 1999, 166; Massey, Durand, and Malone 2002; see table 7A.1).

IRCA was a stunning failure. The negative consequences were manifold. First, the legalization part of IRCA went without a significant hitch—but then personal ties to a legalized migrant itself became a significant predictor of who was likely to migrate illegally. Second, the control aspects not only miserably failed to control illegal immigration, but also had a series of deleterious consequences. Millions of migrants came to America, but, as the sociologist Douglas Massey and his colleagues show, after 1986, average wages of all low-skilled workers fell, including undocumented workers but especially legal migrants. Because of a crackdown in California, illegal immigrants began to spread across the country more quickly—bringing wage-reducing effects with them. Moreover, the California crackdown pushed the migrant transit points eastward into the deserts, and their fees to smugglers—as well as their death rates—skyrocketed (Sisco and Hicken 2009; Massey, Durand, and Malone 2002).

President Bush and the Failed Reform Attempts of 2006 and 2007

President George W. Bush, building on a Latino-friendly governorship, urged fellow Republicans to support reform in the IRCA mold. In his first term, the 9/11 terrorist attack sidetracked his reform plans by thrusting national security to the top of the immigration agenda, and led to a reorganizational of the immigration bureaucracy. A new agency, Immigration and Customs Enforcement (ICE), was created within the new Department of Homeland Security (DHS) (Hing 2006; see appendix table 7A.2). In his second term, however, Bush worked hard for legalization and broader reform.

It was a tough sell. Restrictionist Republicans led passage in the House of the Border Protection, Antiterrorism and Illegal Immigration Control Act in December 2005. This enforcement-only bill would have made illegal migration a felony, criminalized assistance to illegals, provided more penalties on employers, and built more border fences (Wroe 2008, 194; O'Rourke 2006). The bill led to dramatic and massive protests, numbering at least in the hundreds of thousands, in Los Angeles, Chicago, and other cities. Rather than work to soften the bill, however, the Senate simply ignored it (Wroe 2008).

Instead, the Senate worked on a bipartisan bill more in line with what Bush wanted. Senators Edward Kennedy (D-MA) and John McCain (R-AZ) worked with Republicans Mel Martinez (R-FL), Chuck Hagel (R-NE), and Arlen Specter (R-PA) to produce a bill that would offer different legalization schemes for different groups of undocumented immigrants depending on when they arrived. Those in the United States the longest had the most favorable terms—but even they would have to pay fines and back taxes and wait five years before becoming legal. Others would have to leave the country before they could claim legal status. Those in the country the least amount of time (less than two years) would be ineligible for legalization. The bill also would have provided more work visas, including 325,000 guest-worker visas, and more border security; required employer use of an Electronic Employment Verification System, also known as E-Verify, to limit the use of fake documents; and imposed more penalties on employers.

On May 16, 2006, President Bush went on national television to promote immigration reform. He explained that he opposed an amnesty—by which he meant a legalization like that in IRCA, where undocumented migrants could be become legalized without paying a fine, without leaving the country, and without having to wait for a visa. He called an approach that attached these requirements a legalization or a path to citizenship rather than an amnesty. Bush, Vice President Cheney, and White House Senior Advisor Karl Rove lobbied Congress as well as conservative radio hosts to support the Senate bill.

Not all Democrats were on board: some had reservations about the bill’s guest-worker program. Labor unions were divided on this point, with the Change to Win coalition supporting it and the AFL-CIO fearing that employers would use it to bring down wages, benefits, and work conditions (Waldinger 2008; Wroe 2008).
The bill passed the Senate with bipartisan support—and opposition. It passed on a 62 to 36 vote, with Republicans voting 23 to 32 and Democrats showing more support for Bush and voting 39 to 4. However, the bill died in the House, where the Republican leadership refused to let the bill come to a vote (Wroe 2008; see appendix table 7A.2).

A grand-bargain bill with legalization thus failed with Republicans controlling Congress and the White House. The Democrats took control of Congress in 2007, and conditions seemed ideal: a pro-grand-bargain, Republican White House with influence over other Republicans and a pro-grand-bargain Democratic Congress. Working with several leading Republicans and Democrats, the bargaining team once again sought to find the right balance between legalization and border enforcement, to find just the right combination that would bring about a successful vote. They tinkered with details such as what undocumented workers would have to do to earn legalization, when legalization would become available (know as the trigger—usually linked to the establishment of border security), how much and what kinds of new border security to provide, mandatory E-Verify, and the number and nature of guest-worker visas. In a bigger change that promised more business support, the 2007 effort would have shifted the balance of legal visas more toward skilled rather than family reunification. Despite all of the tinkering, antilegalization forces remained opposed. Citizens flooded their senators’ offices with phone calls and emails objecting to the legalization provisions. Negotiations collapsed, and the 2007 bill failed without even getting out of the Democratic Senate (Pear 2007; Wroe 2008, 213).

**GHOST OF IRCA: EARLY ADMINISTRATIVE MOVES AND THE SENATE PROPOSAL**

Continuing his reform-friendly stance as a senator, Obama’s campaign promised grand-bargain, IRCA-style reform, as well as smaller, practical changes that would appeal to immigrants without angering either side (Obama and Biden 2008). Although President Obama has offered various sweeteners for legal migrants, his overall legislative approach is similar to the failed bills from 2006 and 2007: those without documents would have to take various steps to be legal, and enforcement measures would be strengthened. But the Democrat Obama has done more for enforcement than his Republican predecessor.

**Showing Off by Toughening Up**

In office, Obama put priority on other issues, including the economic stimulus, health care, and financial regulation. But a delay on immigration appeared to be necessary anyway: one of the legacies of IRCA and the failures in the 2000s is that many in Congress demand an enforcement-first strategy (Tichenor 2009). To gain credibility for legalization, therefore, Obama used the powers of the presidency for a variety of new enforcement measures. Although not following any established program, Obama’s efforts here resembled in essence the so-called third-way politics advocated by centrist groups such as the Democratic Leadership Council (Marshall and Schram 1993). In other words, Obama sought to achieve some of the goals of restricionists, but not by use of restricionists’ favored means.

For example, rather than indiscriminate deportations, Obama has demonstrated immigration control by ramping up deportation but focusing his effort on undocumented criminals. Deporting criminals saves taxpayers’ incarceration dollars and is less likely to involve the high drama and psychological injury that sometimes accompany family break-ups. Obama’s administration set a record in fiscal year 2009 by deporting more than 380,000 people—tens of thousands more than Bush’s record high. Fully one-third of these individuals were criminals. In fall 2010, Obama was on pace to deport a record 604,133 people for that year (Kaye 2010; Newton-Small 2010; Preston 2010a).

To target criminals, and the most severe among them (and thus least deserving of legalization), Obama has modified the policies that regulate ICE’s cooperation with local police. In 1996, a Republican Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act. This law contained a section, known simply as 287(g), that authorized the DHS secretary to make agreements with state and local police to perform some immigration law duties. Homeland Security Secretary Janet Napolitano reformed this process to standardize the agreements and took measures to ensure that police did not detain individuals simply because they suspected they were undocumented (U.S. Department of Homeland Security 2009). Napolitano has also put money into expanding a program begun in 2007, called Secure Communities, in which local authorities send to the federal government the fingerprints of criminal aliens so those in the United States illegally can be identified. ICE may then deport the illegal aliens who are criminals, prioritizing those who have committed the most serious crimes (U.S. Department of Homeland Security 2010).

Obama and Napolitano have also sought a third-way approach to workplace enforcement. Rather than (literally) chasing and handcuffing fleeing migrants in dramatic raids as in the past, Obama has ICE focus on prosecuting employers. This approach uses mostly civil law, focusing on fines and penalties, rather than criminal law. For example, ICE gave thirty days to clothing maker American Apparel to prove a suspicious third of its workforce had authorization to work in the United States. The company
faces $150,000 in fines; no arrests have been made, though the company fired about 1,800 workers (Hsu 2009; Preston 2009a, 2009b). ICE has now audited employee files at nearly 3,000 companies and issued a record $3 million in civil fines. There was a single day in July 2009 when ICE audited more employers’ hiring practices than it had in all of 2008 (Napolitano 2009; Preston 2010b).

Obama’s enforcement-first strategy dictated his budget requests. He requested $4 billion to support 20,000 Border Patrol agents, $112 million for the E-Verify system (required for employers with federal contracts but otherwise voluntary), as well as money for streamlining visa application services (Office of Management and Budget 2009; for analysis, see Martinez 2009). His Southwest Border Initiative doubled the number of agents on Border Enforcement Task Forces, tripled the number of border intelligence analysts, brought new canine teams to the border, continued work on the fence, and created more partnerships with local police (Cummings 2010; Napolitano 2009).

Congress moved on immigration enforcement in time for the midterm elections. Though it was not the comprehensive reform Obama promised, the $600 million enforcement-only border security bill, which he signed on August 13, 2010, fit with the enforcement-first strategy that is the legacy of IRCA. It authorized and funded the hiring of more than 1,000 new border agents, new ICE officers, improved communication, and more use of surveillance drones. Obama stated, “These steps will make an important difference as my administration continues to work with Congress toward bipartisan comprehensive immigration reform to secure our borders, and restore responsibility and accountability to our broken immigration system” (2010a).

Inching toward Legislation as Republicans Run from Reform

Unlike the August enforcement bill, which sailed through Congress, comprehensive reform has hardly moved. The legislative effort began on June 25, 2009, when Obama met with a bipartisan group from Congress, including Senators John McCain and Lindsey Graham—two Republicans long sympathetic to legalization of undocumented migrants. Obama then announced that Napolitano would take the administration’s lead in crafting legislation (Obama 2009). In a speech to the Center for American Progress on November 13, 2009, Napolitano laid out the administration’s early line.

She argued that proper reform was like a three-legged stool. It would enforce the law on the border, improve “legal flows for families and work-

er’s,” and provide a “firm but fair” plan to deal with the millions of undocumented already here. But her emphasis was on enforcement. Although Napolitano acknowledged the moral difficulties that many Americans had with illegal immigration (the problem of undocumented workers was “an affront to every law-abiding citizen and every employer who plays by the rules”), she admitted that the reason for the enforcement-first strategy was to show Congress that unlike other post-IRCA presidents, the Obama administration was serious about enforcing the law, and therefore a new grand bargain would not fail like IRCA.

However, she also argued that legalization was important to protect American workers from being undercut by exploitable illegal workers, and supported a labor-friendly guest-worker program as well as provisions for more high-skilled immigrants. Notably, she argued that the timing was right because of—rather than in spite of—the economic downturn. The time was right for reform because reform was, along with the stimulus, health care reform, and clean energy, part of the things that must be done “to fortify America for the long run” (Napolitano 2009).

Not surprisingly, finding Republican allies in the Senate has proven to be more difficult for Obama than it had been for Bush. In a tough primary challenge from an immigration restrictionist, long-time reform supporter McCain abandoned the effort. But throughout 2009, according to insiders interviewed for this chapter, Lindsey Graham worked on a proposal, mostly behind closed doors, with Obama’s major Democratic ally, Chuck Schumer of New York, who was another long-time supporter of reform (Schumer and Squadron 2007; Connally 2010). On March 19, 2010, they unveiled the outline of their plan in a Washington Post op-ed (Schumer and Graham 2010). Their approach was very similar to Napolitano’s, though they emphasized an idea that in various forms had been kicked around since IRCA: a fraud-proof (now biometric) Social Security card that the government would require of all Americans.

About a month later, however, Graham walked away from his own plan. Officially, he stated that he would not support reform if, as Majority Leader Harry Reid (D-NV) was promising, the Democrats pushed it before another Graham priority—an energy and climate bill (Kornblut and Hsu 2010). Graham believed the Democrats were pushing immigration reform only to score political points with Latinos. As he explained in a letter to John Kerry (D-MA) and Joseph Lieberman (I-CT), leaders on the energy and climate bill, “Moving forward on immigration—in this hurried, panicked manner—is nothing more than a cynical political ploy. I know from my own personal experience the tremendous amounts of time, energy, and effort that must be devoted to this issue to make even limited progress. . . . Let’s be clear, a phony, political effort on immigration today
accomplishes nothing but making it exponentially more difficult to address in a serious, comprehensive manner in the future” (Eilperin 2010). Democrats countered that Graham's move was inspired by his desire to take attention off of John McCain's flip-flop on immigration (Stewart 2010). Indeed, on the day that Democrats unveiled their proposal, Graham switched his support to a border security bill instead, put forth by McCain and fellow Arizonan Jon Kyl (Klein 2010; O'Brien 2010). This left post-IRCA immigration reform in worse shape than it had ever been in: zero Republican supporters in the Senate.

Obama could not count on similar unity among Democrats. Senators from conservative states preferred that Obama focus on jobs and the economy rather than on immigration. Arkansas Democrats Mark Pryor and Blanche Lincoln, as well as Nebraska’s Ben Nelson, all resisted the reform effort (Bolton 2010a).

Despite the GOP wall of opposition and the lack of consensus in their own party, Democrats supportive of reform went ahead and unveiled their plan on April 29. Their twenty-six-page proposal, based on the Graham-Schumer ideas but then called Real Enforcement with Practical Answers for Immigration Reform (REPAIR), offered legalization after eight years if applicants learned English, had no criminal record, and paid back taxes. The proposal also (of course) offered more funding for border security. It would also create a new biometric Social Security card (Bacon 2010). Obama went on the telephone to win Republican support, focusing on Dick Lugar (R-IN), Judd Gregg (R-NH), Lisa Murkowski (R-AK), Scott Brown (R-MA), and George LeMieux (R-FL). None joined the effort (Hunt 2010; Lee and Hunt 2010).

By June, immigration reform was off the agenda but not quite on the backburner. In the House, Luis Gutierrez (D-IL) continued to fight hard for a bill, but the Obama administration showed little interest in that effort. In the Senate, Democrats appeared to move to a strategy of trying to win Latino votes by blaming Republicans for inaction or backward steps. Robert Menendez (D-NJ) told Politico that a chance for a bill before the midterm elections was small: “Here are the clear facts,” he explained. “If we put a bill on the floor tomorrow, we need Republican votes” (Raju 2010). In a meeting with reform advocates behind closed doors, Democrats admitted that not only did they not have GOP votes, but they had also not secured all Democrats, either, and that some were considering giving up the grand bargain strategy and moving to a focus on undocumened children or agricultural workers (Raju 2010).

Some of Obama's most prominent moves on immigration in the summer of 2010 included a July 1 speech on reform that featured a call for legalization—in which, not surprisingly, he blamed Republicans for obstruction (Obama 2010b). On July 6, the Justice Department sued the state of Arizona for a controversial new law that required police officers to check the documents of persons they stop for another purpose when they have "reasonable suspicion" that the persons are here illegally; on July 28, a federal court agreed to block those provisions. On August 13, Obama quickly—though quietly, with no reporters present—signed the $600 million border enforcement bill that the Senate had passed the day before.

The biggest move for reform came during the lame-duck period, when the Obama administration made a big push to pass the Development, Relief, and Education for Alien Minors Act (DREAM Act), which would have offered legalization to a limited set of illegal immigrants who were brought to the United States by their families and fulfilled a set of educational or military requirements. The bill, which had a long, bipartisan history, passed the House but on December 18, 2010, forty-one senators voted against ending debate and only fifty-five in favor, five votes short of the sixty needed. The bill won three Republican votes, but five Democrats went against Obama's position and did not support it (Preston 2010c; see appendix table 7A.3 for a summary of actions under Obama).

WHY NO REFORM (YET)?

There is no one reason why, by the beginning of 2011, Obama had not yet been able to follow through on his promise of comprehensive immigration reform. The situation is obviously more complex than that, and requires identifying several factors—some specific to immigration, some specific to the Obama presidency, and others more general—that collectively have stymied reform.

Perceptions, Meanings, and Resistance to Reform

Understanding how policymakers perceive policies or their beneficiaries helps us to understand whether and how policies develop (Skrentny 2002; Steensland 2008). Put another way, perceived reality is what matters in politics. Critically, the failure of IRCA appears to have shaped the perception of immigration reform and especially legalization. Inside the Beltway and out, many people simply do not believe enforcement will work, and thus any legalization will be an IRCA-style giveaway. This explains why Obama sets records in deportations and workplace audits. It explains Obama's support for the $600 million border bill. It also explains the intense resistance to legalization among many in Congress, including some Democrats, that both Obama and George W. Bush have confronted.
The political scientist Daniel Tichenor notes that in 2007 the public was very skeptical of the Senate bill that ultimately failed: more than 80 percent polled said that it would not reduce illegal immigration (2009, 18). Though immigration control in general has been a bipartisan failure, more Democrats than Republicans supported IRCA and support legalization today. The public now trusts Republicans more than Democrats to handle illegal immigration, 46 to 36 percent (Polling Report 2010).

Inside the Senate in 2007, Tichenor shows, veterans of both parties revealed their skepticism. Byron Dorgan (D-ND) complained that in 1986 he believed the enforcement claims of IRCA supporters, but learned that "none of them were true, and three million people got amnesty. There was no border security to speak of, no employer sanctions to speak of, and there was no enforcement." Robert Byrd (D-WV) vowed not to make the same mistake again. Chuck Grassley (R-IA) said, "I was fooled once, and history has taught me a valuable lesson" (Tichenor 2009, 18).

The phrase comprehensive immigration reform is thus saddled with a very negative meaning, which makes passage more difficult now—despite the growth in the Latino electorate—than it was in 1986. But another problem of negative perceptions, which was around in 1986 but is stronger or at least better mobilized now than in 1986, is the negative perceptions of undocumented immigrants themselves as morally unworthy of help (Newton 2008).

Scholars in political science and sociology recognize the power of perceptions of moral worthiness in politics (Skrentny 2006). As Theda Skocpol has written, "Institutional and cultural oppositions between the morally ‘deserving’ and the less deserving run like fault lines through the entire history of American social provision" (1992, 149). Indeed, moral understandings can be a major driver of a wide variety of issues in American politics (Morone 2003).

In the view of many, undocumented immigrants are illegal, they are lawbreakers, and thus they are unworthy of any government aid. For many Americans, undocumented immigrants are quite like other controversial groups, such as gays and lesbians, in that their actions are an affront to American morality. Economic, cultural, or racial interests may also matter, but these are tied up with moral meanings that become the public frame for the issue. In this view, illegal aliens violate moral boundaries regarding rule of law, personal responsibility, and national sovereignty.

By themselves, of course, negative perceptions of particular groups such as undocumented immigrants cannot have any effect, and it is true the negative moral meanings have long been there, including when IRCA passed. However, in 1986, restrictionist groups and conservative media did not have the reach that they do today. For example, FAIR (Federation for American Immigration Reform) started in 1979, but its grassroots op-

eration did not get under way until the 1990s (Tichenor 2002). Opinion leaders now have their influence enhanced by a media environment that segments Americans into distinct groups who are now more likely to perceive distinctly different realities (Shapiro and Jacobs 2011). With these forces now able to use powerful moral frames, transmitted through grassroots organizations and a combination of print, broadcast, and Internet media to mobilize restrictionist voters, legalization has become radioactive for many in Congress.

Moreover, immigrants have spread far beyond their traditional destinations of California, Texas, New York, Illinois, and Florida. New gateways of immigration have opened up across the country, attracting increasing numbers to states such as Georgia, North Carolina, and Nevada (Singer 2008), and leading to immigration controversies in increasing numbers of congressional districts and states. More specifically, anti-immigrant hostility is most likely found in new gateways, and it is found there when (as now) it is activated by national political discourse highlighting the new threats (Hopkins 2010). It is now easier, therefore, for restrictionists to find large numbers of voters to oppose grand-bargain reform in general and legalization in particular.

The morality politics of illegal immigration is best demonstrated if we compare it with that of legal immigration. Legal migrants are similar to illegal migrants in terms of race, though illegals are somewhat more Latino and somewhat less educated. However, since the 1940s, strong norms of human rights and nondiscrimination have shaped legal immigration politics, and pro-immigration interest groups police those boundaries with zeal (Skrentny 2002; Tichenor 2002; Wong 2006). Despite the recommendations of a bipartisan commission to limit at least some family visas (U.S. Commission on Immigration Reform 1995), Congress has had little success in limiting legal migration since the 1920s. On legal immigration, politicians offer sentimental arguments to the contributions of newcomers and the glorious tradition of America's "golden door." Lobbying by ethnic organizations, religious groups, business interests, and others takes place in a quiet, "client politics" mode (Wilson 1980; Freeman 1995). Legal-immigration restrictionists are easily on the defensive. They tend carefully not at all (Graham 2003).4

It is a different story with Obama's priority: legalizing the illegal. Illegal immigration is the last stand for Republican immigration restrictionists, but it is an area where they can make a strong stand. Emphasizing law, as well as fairness to legal migrants, who commonly wait years for visas, is not too difficult to make restriction arguments without appearing to be racist or mean-spirited.5 Indeed, the closest the current congressional Republicans have come to advocating restrictions on legal migration—Lindsey Graham's short-lived interest in hearings on repeal of the Fourteenth
Amendment’s guarantee of birthright citizenship (Barr 2010b; Cook 2010)—actually focused most attention on the morality of illegal parents who exploited American law to (in Graham’s words) “come here to drop a child.” Lawmakers on the national stage and in most GOP districts, therefore, can have a principled stand against legalization and for strong border enforcement without driving away many independent voters.6

The morality politics of illegal immigration has led reformers to invest considerable time and resources to find ways to talk about legalization while not offending the American public’s moral sensibilities. The pro-immigration interest group America’s Voice and the liberal think tank Center for American Progress did extensive polling with stalwart Democratic consultants Stan Greenberg, Celinda Lake, and Guy Molyneux to learn how to talk about reform. The results were sobering: Surveys in swing districts highlighted deep voter frustration. The pollsters ended up urging reformers to use the term illegal immigrants instead of undocumented workers. Drew Westen, a political consultant, advised, “When [voters] hear ‘undocumented worker,’ they hear a liberal euphemism, it sounds to them like liberal code.” Even the language of earned path to citizenship sounded to voters like a gift to the unworthy. A winning message, the pollsters concluded, should emphasize toughness and practicality (Brown 2010a).

Unique Challenges: Unprecedented Partisanship, the Great Recession, and a Rogue State

Though not necessary to stop reform in the past, another barrier for Obama is the growing partisanship in Congress. Obama confronts what may be the highest point of a decades-long partisanship trend (Layman, Casey, and Horowitz 2006; Lee 2009). Parties are increasingly unified and responsive to party leadership rather than constituents. Immigration specifically has become an increasingly partisan issue since the 1980s (Gimpel and Edwards 1999). In an analysis of all votes on the 2006 and 2007 failed reform bills, Benjamin Marquez and John Witte (2009) found a strong party effect with Democrats on the pro-reform side and Republicans against.

To be sure, immigration reforms of the past few decades—1986, 1990, 1996, and the failed efforts in 2006 and 2007—had Republicans and Democrats on both sides of the issue. McCain and Graham attended a meeting with Obama in June 2009 and Graham helped draft the 2010 proposal. As of this writing, however, there is not a single Republican senator willing to support a grand-bargain reform that includes legalization. What changed?

Although this may be the most polarized Congress in modern history (Galston 2010), the pullback seems driven more by partisan strategy than by ideology. Republicans have supported a strategy of no because as the minority party—as one reform advocate reminded me—responsibility to govern falls mostly on the majority party. Obama himself said in his July 2010 address on immigration reform, “Now, under the pressures of partisanship and election-year politics, many of the eleven Republican senators who voted for reform in the past have now backed away from their previous support” (Obama 2010b). Opposing legalization is a potentially winning GOP strategy, at least in the short term, as I discuss in the final section of this chapter. The key point here is that as long as Republicans remain totally unified in opposition, no legalization reform can get through the Senate.

Second, perceptions of economic challenges are often associated with rises in immigration restrictionism (Citrin et al. 1997). Though the Great Recession was not necessary to stop reform for Bush, it certainly makes things more difficult for Obama. Reformers in general and Obama’s spokespersons in particular have tried to make the best of a bad situation. They have indicated a strong desire for reform still exists, and they have skillfully turned the traditional argument on its head: reform is a good idea precisely because of the weak economy, because it will aid the economy and protect American workers. I heard the same position from the Democratic staffer with whom I spoke, who noted that, “fortunately for
us,” studies show that legalization will be good for the economy because it will lead to increased tax revenues. In addition, the influx of younger workers will help Social Security. Another reform advocate stated that Americans “can’t build a strong economy on the basis of a broken immigration system.”

Yet restrictionists know that the recession provides yet another arrow in their own quiver. One Republican staffer, who expressed great concern that the “economy is in the toilet,” said that in the fight against amnesty, the poor economy is “the gift that keeps giving.” Legalization, in this view, will simply open up even more Americans to unwanted competition for jobs once legalized workers can emerge from the shadow economy and work anywhere. Similarly, Rosemary Jenkins, director of government relations for NumbersUSA, which opposes legalization, told me firmly, “The unemployment rate makes it impossible to justify amnesty.” Taking these points seriously, one legalization advocate admitted to me that there is reason to worry that taking up immigration now will make Obama and allies in Congress vulnerable to the charge of ignoring the job concerns of ordinary Americans.

One could see the effects of the economy on immigration politics when Democratic governors pressed their concerns in a meeting with Obama in July 2010. Unhappy with the Justice Department’s decision to sue Arizona, Tennessee’s Phil Bredesen said, “Universally the governors are saying, ‘We’ve got to talk about jobs.’... And all of a sudden we have immigration going on. It is such a toxic subject, such an important time for Democrats” (Goodnough 2010).

Finally, the Arizona law itself also creates new challenges for immigration reform. The press made much of Arizona’s new law allowing the police to demand identification from persons they suspect are undocumented. This attention fired up many pro-reform advocates, and in some ways provided arguments for reformers who framed the law as harsh or inhumane, as well as an unworkable and unconstitutional intrusion into a federal matter. However, this effect was balanced by another effect that takes some wind out of the reform sails: Democrats could then cast themselves as pro-Latino simply by playing defense rather than reforming law. They can loudly criticize the Arizona law, and others that may spring up in the next few years, take legal action, as the Justice Department did on July 6, 2010, and do their best to tag Republicans with the law’s anti-Latino symbolism. A July 28 federal court ruling that blocked the key parts of the law did little to quiet the issue. As one Democratic House aide said, “There are always politicians who see this as a good political football vs. a policy problem to be solved. They would rather have the fight over immigration to fire up Latino voters than jump into this with both feet” (Wong 2010). Moreover, polls showing that small but consistent majorities support the Arizona law give more arguments for restrictionists (Polling Report 2010).

Supporting Actors: Public Opinion, Expert Ideas, Interest Groups, and Reform Stalemate

Democratic theory predicts that political leaders give the people what the people say they want. Evidence indicates that at least at some periods in the past, particularly the mid-twentieth century, policy tended to move with public opinion (Page and Shapiro 1983; Burstein 2003). Is reform failing because the public is against it?

The problem with this explanation is that many if not most polls—and particularly those in the immigration area—are difficult to interpret and highly sensitive to question wording. Poll data suggest both that the public tends toward immigration restriction and supports strong border enforcement (Simon 1985; Graham 2003; Schuck 2007; Polling Report 2010), and that it also supports comprehensive reform and in particular legalization programs.

For example, in a review of polling data on the key elements of reform since 2001, the political scientist Deborah Schildkraut found consistent results that were surprisingly liberal (2009). On the most controversial aspect of Obama’s plan, she concluded that between 2001 and 2009, an average of only 33 percent of Americans opposed earned legalization for undocumented immigrants whereas an average of 61 percent supported it. Using the word amnesty in the question increased opposition, though not always producing majorities. Forty-three percent of Americans supported deporting undocumented immigrants, and 51 percent opposed it.

These results do not sway opinion in Washington. One problem is they do not capture the intensity of restrictionist opinion, though they are misleading in other ways as well. For example, when I discussed the legalization results with NumbersUSA’s Rosemary Jenkins, she quickly pointed out that the deportation position is a straw man and expressed frustration with any poll or discussion of undocumented immigration that offered as the only policy options legalization or deportation. Her organization supports "attrition through enforcement," where undocumented immigrants would voluntarily go home when they realize they cannot work in the United States any longer. Jenkins argued that a 2006 Zogby poll, commissioned by the restrictionist Center for Immigration Studies, showed that when given the choice between the conditional legalization approach, as in the 2006 Senate bill, and the House’s 2006 attrition-through-enforcement model, majorities chose the latter. Specifically, when
given a three-way choice between the Senate’s legalization, the House’s attrition, and simple deportation, public support was 28 percent, 56 percent, and 12 percent, respectively (Camarota 2006).

It is therefore not surprising that a Democratic staffer close to the process told me flatly that poll results do not shape their approach to the bill because of their sensitivity to question wording. Instead, this staffer reported that the pro-legislation side used polls results to shape their arguments for positions they already held, especially when trying to frame legalization in a way that persuaded Republicans to support their cause. In other words, following the argument of Lawrence Jacobs and Robert Shapiro (2000), they use polls to try to change public opinion, rather than to follow the public’s wishes.

Alternatively, some scholars have argued that consensus expert ideas, such as general causal models of how the world works— for example, whether deregulation leads to economic growth— can explain policy development (Dert Hick and Quirk 1985; Campbell 2002). In the case of comprehensive immigration reform, however, there is no consensus. Both sides use expert ideas in the same instrumental ways that they use polls to win arguments and to persuade the undecided. Moreover, both sides rely on the ideas generated by their favored think tanks rather than the ostensibly more neutral academia. For example, one Democratic staffer told me that the pro-legislation side closely monitors expert ideas, and indeed looks at “everything that comes out”— and this staffer did list a wide range of sources of ideas, including the Brookings Institution, the Cato Institute (libertarian and thus a supporter of opening borders), and the Center for American Progress. Yet this staffer did not mention the ideas that were put forth to me as definitive and authoritative by a Republican staffer—the restrictionist Robert Rector at the Heritage Foundation— whose work emphasizes the costs of legalization.

Finally, is the failure to reform due simply to restrictionist groups being stronger (with more funds, better organization, and larger memberships) than legalization forces? The answer is no. Though restrictionist groups are stronger than in 1986, they still are outnumbered and outresourced (for a scorecard, see Marquez and Witte 2009). They are also excluded from the process of writing comprehensive reform bills.

The pro-reform side, according to a Democratic staffer, is in dialogue with several ethnic-orientated advocacy groups, including America’s Voice, the National Immigration Forum, and the National Council of La Raza, as well as major labor organizations, such as the AFL-CIO and the Service Employees International Union (SEIU), and, to a lesser extent, the U.S. Chamber of Commerce, which is focused more on future flows of legal workers rather than legalization. The two big labor unions, which in the past had differences on guest-worker programs, are now unified (Jost and McCullough 2009). Religious leaders of both Catholic and Protestant denominations have also been proponents of legalization. When I asked a pro-reform interest group advocate who was involved in shaping the proposal, the answer was, “Everyone under the sun”.

However, when I asked if “everyone” meant that the restrictionist organizations, such as FAIR or NumbersUSA, weighed in on what they wanted, I was set straight: “No.” Although opposition groups with electoral clout typically receive some deference (Mayhew 2004), NumbersUSA’s Jenks confirmed to me that her group was not invited to participate in any way. Still, the anti-reform side can rely on highly motivated individuals to mobilize the antilegalization public and use institutional veto points to exert pressure on Congress. In short, a drastic growth in the power of the pro-reform coalition is needed for interest group strength to be decisive.9

PATHWAYS TO REFORM?

Obama and the Democrats failed to push through their desired immigration reform in Obama’s first two years, and now face a Republican majority in the House of Representatives. Does this mean that reform is dead for the Obama presidency? The answer is not simple, but several observations may clarify possible moves forward.

Rebranding the Grand Bargain

First, for the reasons already described, a grand-bargain reform with a mass legalization package seems very unlikely to pass in the near future. What is needed would be a massive rebranding of the moral meanings of legalization and illegal immigrants, and to give political cover for members of Congress to support reform, that rebranding would have to come from the right or with the significant involvement of the Republican base. This is not as far-fetched as it sounds. A potentially significant development has been new pro-reform activity by a reliably conservative and Republican interest group: evangelical Christians. Though some evangelical leaders admit that part of their motivation is to proselytize among the sometimes-only-nominally Catholic Latino migrant population (Gerstein and Smith 2010), their public message on legalization, along with that of mainline Protestant, Catholic, and Jewish organizations, is moral and based on Bible teachings to welcome strangers. The National Association of Evangelicals (NAE), representing 30 million believers, decided in 2009 to support legalization and has held reform vigils. On May 13, 2010, NAE paid for a full-page ad in support of legalization in Roll Call (Goodwin 2010). An evangelical leader introduced Obama for his July 2010 speech
on immigration and others, including the NAE president, were in the front row (Goodstein 2010). Other religious leaders have banded together to form the Christians for Comprehensive Immigration Reform (Christians for Comprehensive Immigration Reform 2009).

NumbersUSA’s Rosemary Jenks argued to me that the religious leadership is out of touch with the church members, and that the members will not go along with legalization. A Zogby International poll does show a significant split between leaders and flock on desired levels of immigration (Neehus 2009). Leaders themselves have acknowledged the challenge in changing opinion (McKinley 2010). Yet evangelicals have shown power to mobilize voters in the past (Rozell and Wilcox 1996; Wilcox and Sigelman 2001), and if they can mobilize those in the pews to support legalization, the shift in interest group power will be important, because the moral thrust of their argument could also shift the public perception of legalization. Religious groups could help rebrand illegal immigrants as something closer to friendly strangers who need generosity and support.

Another potentially important change in the interest group landscape is the creation of a high-status, deep-pocketed reform coalition. Michael Bloomberg, mayor of New York City, joined forces with News Corp CEO Rupert Murdoch to lead creation of this new group, Partnership for a New American Economy. Other members include mayors of Los Angeles, San Antonio, Philadelphia, and Phoenix, as well as major corporations, including Hewlett-Packard, Walt Disney, Marriott International, Boeing, and Morgan Stanley. The group vowed to fight for the key elements of a grand bargain, including legalization, border enforcement, and other reforms to supply the labor market with migrant labor at both the high- and low-skilled levels (Tofee 2010; Finnegan 2010). The new group is significant because it showed large business interests moving on legalization as an issue. They may operate only behind the scenes, but if they use their deep pockets on ads to reframe and rebrand the issue (Kindel 1998; Goldstein and Ridout 2004), a group such as the Partnership could help make a grand-bargain reform possible.

An immigration reform in Utah, which stunned many in the Obama administration, provides a blueprint for future reform through rebranding by the right. In that state, a conservative religious group—the Mormon Church—joined forces with a deep-pocketed business group—the Salt Lake City Chamber of Commerce—to promote a reform that would legalize many of the state’s undocumented migrants. On March 15, 2011, Republican Governor Gary Herbert signed a bill that would allow most law-abiding illegal workers and their families to pay a fine of up to $2,500 in order to receive documents authorizing work in the state. He also signed a restriction measure that required Utah police to check the immigration status of those arrested for felonies or serious misdemeanors. In essence, Utah passed a conservative-led grand bargain. The measures were preceded by a document, created by business and civic groups and endorsed by the Mormon Church, called the “Utah Compact.” It committed signees to support business-friendly and family-centered immigration policies. Utah reformers are trying to take their approach to other states and the federal government (Riccardi 2011).

Political Boundaries and Possible Action

Absent this rebranding of mass legalization, immigration politics is likely to be played within nebulous but very real boundaries. On the reformer side, there may be immigrant-friendly developments, including small-scale legalizations, but these will stop short of opportunities for mass legalization, including even those plans with penalties and Byzantine requirements. On the restrictionist side, border enforcement must steer clear of bills that reformers can credibly cast as anti-Latino, racist, or mean-spirited.

The reasons for the boundaries for reformers have already been described. Yet mirror-images of these factors also affect the restrictionists. For example, reformers can use the ample opportunities to torpedo enforcement bills that restrictionists have used to kill reform. Edward Alden, a senior fellow at the Council on Foreign Relations and the director of a bipartisan task force on immigration that recommended grand-bargain reform (Alden, Bush, and McLarty 2009), told me, “The central dynamic of the next couple of years, I think, will be Republicans in the House pushing for restrictionist legislation, and the pro-reform side mobilizing to block it. The essence of the current stalemate is that each side has enough power to stop the other, but not enough to move ahead forcefully with its agenda” (Alden, personal correspondence, November 22, 2010).

In addition, just as Obama was stymied by Republican opposition, restrictionists will need significant Democratic support in the Senate to get anything done. Both need bipartisanship. As Tamar Jacoby, leader of the pro-reform small business federation Immigration Works USA, observed in a conversation with me before the midterm election, “Only when both sides get serious about governing together will things get done.”

The morality politics of legalization has a flipside for restrictionists as well: don’t be too harsh. Exactly when enforcement and border security goes too far and becomes mean-spirited or racist is not clear, but it is certainly not the case that any restriction bill will pass. For example, the House bill in 2006 that criminalized aiding illegal immigrants failed. A bill to eliminate birthright citizenship is also likely outside the bounds; one House staffer on the Democratic side predicted that despite some tough GOP talk on a statute that would end birthright citizenship, no bill was
likely to get out of committee. Legislatures in conservative states may try to act on their own, however (Preston 2010d). In general, tough treatment at the border has been acceptable in national politics, but the politics becomes more unpredictable and perilous for aggressive enforcement and exclusionary strategies deep inside the nation’s borders or when directed at long-term, otherwise law-abiding illegal residents.

So where is the middle ground on immigration? Moderate moves can likely include more efforts at enforcement: more officers patrolling the border, more fences, more and better surveillance technologies. There always seems to be more to be done, and even if they cannot be shown to actually work, increased efforts to protect American borders—American sovereignty—make for good politics. Although supportive of the $600 million August 2010 bill, Republicans such as McCain immediately said it was not enough (Associated Press 2010).

As long as many politically active Americans and many in Congress perceive the border as porous, the negative meanings created by IRCA’s failure suggest that increased enforcement will remain a popular policy option even for reformers. Either through administrative action or legislation, we are likely to see more restriction effort, especially to seal the border. Reformers have a strong interest in portraying the border as controlled so they can get to the promised land of a mass legalization. Restrictionists will support those efforts but, as McCain did in 2010, will call for yet more efforts to fortify the border. Restrictionists also know that one of the legacies of IRCA is that as long as the border is perceived as insecure, there can be no mass legalizations.

There are also some workplace enforcement measures that are in the middle ground of immigration politics and ripe for action—especially as long as jobs are a top political issue. E-Verify has become the standard workplace enforcement measure in reform bills, and also will likely be expanded. Workplace enforcement has the political advantage of promising to reduce employment opportunities for illegal immigrants without the dramatic raids that sometimes divide families and can make for bad press. Given the Great Recession’s devastating impact on jobs, any immigration restriction efforts that can be sold to voters as part of a job protection strategy likely receive bipartisan support. However, the array of privacy and individual liberty groups that oppose reformers’ most innovative idea, the biometric Social Security card, will likely keep that idea outside the playing field.

Other possible reforms focus on legal migration. For example, new policies to attract skilled migrants, and in particular, to make it easier for foreign graduates of America’s universities to stay in the country, have some advocates. Other policies within the boundaries of immigration poli-

Politics and thus likely to attract bipartisan support include a temporary work permit program to allow for a flexible, low-skilled labor supply, and efforts to reform family reunification visas, which currently suffer from backlogs that force migrants to wait for years (for these and other policy fixes, see Alden, Bush, and McLarty 2009). Finally, also within the boundaries of the possible are limited and targeted legalizations (Marquez and Witte 2009). One popular strategy with significant grassroots mobilization remains the DREAM Act, which would offer legalization to undocumented immigrants who came to the United States before they were sixteen years old, lived in the United States for at least five years, and finished college or two years of military service. Senator Orrin Hatch (R-UT) originally introduced the DREAM Act in 2001 with bipartisan support, seven Republicans and twelve Democrats. Although DREAM is usually included in grand-bargain bills, it lost a vote as a standalone bill in 2007. Senators Richard Durbin (D-IL) and Richard Lugar (R-IN) have nevertheless continued to reintroduce the measure. Durbin and Lugar asked DHS not to deport those who would be eligible for the act in the hopes that it may yet pass (Durbin 2010; Presten 2007; Curvy 2007). Although no agreement has been formalized, DHS has complied: of the nearly 825,000 who would likely achieve legalization (Batalova and McHugh 2010), almost none have been deported. John Morton, head of ICE, told the New York Times, “In a world of limited resources, our time is better spent on someone who is here unlawfully and is committing crimes in the neighborhood... As opposed to someone who came to this country as a juvenile and spent the vast majority of their life here” (Preston 2010b). DREAM supporters argue that the bill’s provisions weaken the moral arguments against legalization because it benefits only those who did not choose to violate U.S. laws and whose legalization is in the U.S. interest (Bruno 2007, 2010).

Another targeted legalization approach that, like DREAM, Congress has considered as both a stand-alone bill and part of most grand bargains is the Agricultural Jobs, Benefits, and Security Act (AgJOBS). This bill would emphasize economic need more than morality. The AgJOBS approach would offer “blue card” and then eventual green card status to undocumented workers who met a series of requirements, including having performed agricultural work in the past, and would come with requirements of three to five years more agricultural work. It would offer the same legalization benefits to spouses and children (Bruno 2010). Although Lugar has been the only Republican sponsor in the Senate, potential for more support from farm state conservatives exists (Bolton 2010a).

The DREAM Act failed twice under Obama in his first two years. In September 2010, Reid brought DREAM to a vote, though he did so in a
calls for more border security, then, actually increases pressure on Republicans to support legalization, because they would be losing excuses to resist, and forced to appear more nakedly anti-Latino or racist. Racist Republicans are good for Democrats. Democrats recognize that support for legalization could hurt them in the short term, especially in more conservative states and districts, but if Texas’s rapidly growing Latino population flips that state from red to blue a few years down the road, the White House is theirs to lose.

But is Democratic support for border control the right way to use immigration to win Latino voters? Obama and the Democrats must decide whether they should give up on the enforcement-first strategy. Alden has argued that such a strategy is a losing game for reformers because there is no clear benchmark for border control—and no likely success. During the Cold War, he notes, the border between East and West Germany featured fifty guards per square mile with shoot-to-kill orders, land mines, electric fences, and barbed wire, yet about 1,000 people each year were able to cross (Alden 2010). Alden suggested to me a kind of reversal of the Democrats’ current enforcement-first strategy; the only way to get a grand bargain may be “for the administration to start dragging its heels on enforcement in a much more systematic way and setting up a real confrontation with congressional Republicans.” In this view, “the essential message would be that the price for continued tough enforcement is some progress on other elements of the reform agenda.”

Alden argued that the Obama policy in 2009 and 2010 was essentially the restrictionist strategy of “attrition through enforcement,” and that “as long as the administration keeps giving the restrictionists almost everything they want for free, there will be no political incentive for the restrictionist side to negotiate.” Senator Jon Kyl (R-AZ) has maintained that Obama has already flirted with this strategy. According to Kyl, Obama told him, “If we secure the border then [Democrats] won’t have any reason to support comprehensive immigration reform,” and therefore border security had to be paired with legalization in a grand bargain (Barr 2010a).

This would be a high-risk strategy, and it could alienate independents and many Democrats. Future Democratic party strategy will depend greatly on what the leadership believes is necessary to continue to attract the majority of Latino votes.

In 2009 and 2010, Republican logic on the question of the place of immigration in winning the Latino vote went like this: Latinos are not like African Americans. On many issues, Latinos are conservatives whose votes are up for grabs, and they will vote based on their conservatism, not on the issue of legalization. Therefore, restrictionism will pay short-term benefits with little long-term risk. This appears to remain the dominant

Party Strategy and the Latino Vote: High Stakes and Big Gambles

I have so far described ways that immigration legislation is likely to go forward during Obama’s presidency and after. But it is possible that one or both parties will use a very different strategy, or even avoid the legislative route entirely. Understanding the final possibilities requires us to first focus on the question that both parties will have to decide: how important is immigration reform to win the growing Latino vote? Each side approaches the question differently.

Currently, the Democratic leadership’s answer to this question goes like this: we support reform, including legalization, because it sends a message to the rapidly growing numbers of Latinos that Democrats are on their side; Latinos will remember this, and reward us for decades just like African Americans have done. As one senior Democratic Party official told the Washington Post, “The fight over immigration is a proxy for tolerance. It’s a proxy for diversity” (Shear 2010). In this view, the Republicans are doomed. A Democratic strategist explained confidently, “Look: The Republicans, if you do the math, cannot be successful as a national party if they continue to alienate Latinos” (Shear 2010). Answering Republican

way that made it difficult for it to pass: as an amendment to a Defense Department authorization bill that also included an end to the military’s ban on soldiers who are openly gay, lesbian, or bisexual. Democrats refused to allow Republican amendments to the bill. Predictably, Republicans filibustered (Herszenhorn 2010a). A stand-alone version of DREAM also failed during December’s lame-duck period, despite significant retooling to make the bill costless—for example, beneficiaries would not be eligible for any grants. Yet DREAM remains alive. Durbin told the Washington Post that some Republicans did not want to pass the bill during the lame-duck period, but might support it in the future. “Some of those who voted against it and spoke against it, and were the angriest over its being offered, have told me they want to sit down and talk, and I want to hold them to it,” he explained (Murray 2011).

Even narrowly targeted legalizations will not come easily, however. These provoke strong restrictionist email, telephone, and fax activity that worries lawmakers. A targeted legalization would be most likely to pass if reformers included several GOP lawmakers in drafting the bills and paired legalization with restriction provisions to provide political cover for restrictionists and to mitigate the negative meanings of reform and legalization. In other words, it would look like a grand-bargain bill but would offer far more to restrictionists than to reformers.
view, though there is still a strong reform group in the GOP who are worried about the growing Latino vote, and believe that a pro-immigration stance is necessary to attract it.

My discussions with insiders in both parties regularly turned up acknowledgment of the Republican predicament, and there are many public statements from Republicans expressing concern. For example, GOP consultant Mike Murphy is among those who think the anti-immigrant—even the anti-undocumented immigrant—strategy is a political loser. Shortly after the 2008 presidential election, Murphy noted Indiana’s switch to the Democrats and commented, “That’s right, GOP, you’ve entered a brave new world ruled by Latino Hoosiers, and you’re losing.” He warned his colleagues starkly: “Illegal immigrants can’t vote. Their children will” (Murphy 2009).

Lionel Sosa, who has advised George W. Bush and John McCain, similarly warned that opposing reform “comes off as insensitive, uncaring to the Latino community” (Shear 2010). Representative Jeff Flake (R-AZ) told Politico, “Republicans see a short-term benefit because of the popularity of the Arizona law. But then, a lot of Republicans realize, long term, this is not a winner for the party to take a position that is so distant from the largest-growing demographic” (Wong 2009). After the midterm elections, both the Wall Street Journal and the Weekly Standard featured calls from Republicans to other Republicans to support some attempt to legalize illegal immigrants in the United States (Jacquot and Rivkin 2010; Bergner 2009). Pro-reform Republicans can point to California, where GOP-supported restrictionism drove out many Latinos (Waters and Jiménez 2005, 114) but also solidified the remaining Latinos’ allegiance to Democrats without a counterbalancing increase in GOP support by non-Latino whites (Bowles, Nicholson, and Segura 2006).

But the dominant view in the Republican leadership remains cool to immigration reform. GOP pollster Neil Newhouse counters, “I’d rather win [Latinos] over on economic issues and tax-and-spending issues than on the issue of illegal immigration.... Democrats are rolling the dice that this is going to help them more in ’12 than it’s going to hurt them in ’10. That calculation is very risky” (Shear 2010). Moreover, a National Journal poll of members of Congress found that only 24 percent of Democrats thought that their own party had the advantage on immigration, whereas 67 percent of Republicans thought that the GOP was best positioned (Cohen and Bell 2010).

The view that Republicans can oppose grand-bargain reform or any legalization bill and still win Latino votes was bolstered after the 2010 midterm election. Although voters returned some Democrats to the Senate in states with large and growing Latino populations, such as California and Nevada, there was much in the returns for restrictionist Republicans to crow about.

Consider the Washington Post op-ed penned by Lamar Smith (R-TX), a restrictionist and the new chair of the House Judiciary Committee, which oversees immigration. Smith observed that House Republicans won 38 percent of the Latino vote in 2010—about 8 percent more than in 2006 and 2008—and “many Hispanics” voted for pro-enforcement and antilegalization Republicans. In addition, some prominent antilegalization Latino Republicans won major offices: Susan Martinez (New Mexico governor), Brian Sandoval (Nevada governor), and Marco Rubio (Florida senator). Five Latino Republicans joined the U.S. House of Representatives. Smith argued, “On many of the most important issues of our day—jobs, education, support for small businesses and the economy—the Republican positions line up with Hispanic values” and that “the right way to attract Hispanic support is to emphasize our shared values” (Smith 2010).

There is evidence that Smith’s view is becoming more entrenched in the Republican Party. At a new GOP event designed to build ties with Latinos, the Hispanic Leadership Network Conference, even pro-reform Republicans significantly dialed down their immigration message. Held in January 2011 in Florida, the event brought prominent Republicans, either live or on video, to deliver messages filled with appeals to Latino voters. Yet featured speakers, including presidential hopefuls such as Tim Pawlenty and Newt Gingrich, assiduously avoided talking about immigration. Even former Florida governor Jeb Bush, long a supporter of grand-bargain reform, avoided immigration talk. He told the conference that ignoring the Latino vote would be “incredibly stupid,” but his four-point plan to reach Latino voters did not even mention immigration. The simple plan was to be mindful of tone, have a broad agenda, appoint Latinos to prominent government posts, including the judiciary, and develop Latino candidates to run for office (Brown 2011). Explaining the tone issue, Bush maintained that “if you send the signals of ‘them v. us’ you’re not going to be able to get the desired result” and that “leaders have to lead and that means they have the responsibility of civility as well as having a tone that draws people toward our cause and not against it” (Reinhard 2011).

Divided government, we need to remember, does not necessarily lead to gridlock and may actually lead to considerable policy innovation as both parties seek to claim credit for legislation (Mayhew 2004). Can divided government be as productive in today’s unprecedentedly polarized political and media environment as it has been in the past, and can it be productive on immigration policy? That is unclear. The only certainty is that all of Obama’s political skills will be needed to move out of IRCA’s shadow and make progress on this most difficult and emotional of issues.
## APPENDIX
### Table 7A.1: Summary of Immigration Reform Legislation (1965 to 1996)

<table>
<thead>
<tr>
<th>Name of Act</th>
<th>Amendment to Immigration Act (Hart-Cellar Act)</th>
<th>Immigration Reform and Control Act (IRCA)</th>
<th>Immigration Act</th>
<th>Personal Responsibility and Work Opportunity Reconciliation Act</th>
<th>Illegal Immigration Reform and Immigrant Responsibility Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>Status</td>
<td>Passed</td>
<td>Passed</td>
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<td>Passed</td>
<td>Passed</td>
</tr>
<tr>
<td>Summary</td>
<td>Eliminated national-origins quota system.</td>
<td>Authorized legalization of undocumented aliens living in the United States since January 1, 1982. Established penalties for employers who knowingly employ unauthorized aliens. Increased border enforcement. Established new category for seasonal agricultural labor and provisions for legalization. Extended registry date for adjustment to permanent resident status to January 1, 1972.</td>
<td>Raised cap on total immigration to 700,000 from 1992 to 1994, and to an overall flexible cap of 675,000 from 1995 onwards. Modified all reasons for exclusion and deportation, particularly those on political and ideological grounds. Authorized attorney general to grant temporary protected status to undocumented aliens from countries with armed conflict and natural disasters.</td>
<td>Restricted eligibility of legal immigrants for means-tested welfare programs. Broadened restrictions on welfare for all aliens.</td>
<td>Created measures of border control, worksite enforcement, and for the removal of deportable aliens. Increased restrictions on welfare benefits for aliens. Created requirements for educational institutions to collect information on foreign students' status and nationality for the INS.</td>
</tr>
</tbody>
</table>

Source: Author's summary of appendix in Waters and Ueda (2007).

## Table 7A.2: Summary of Immigration Reform Legislation (2001 to 2008)

<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>Status</td>
<td>Passed</td>
<td>Passed</td>
<td>Passed</td>
<td>Passage of bill only in House</td>
<td>Passage of bill only in Senate</td>
<td>Passed</td>
</tr>
<tr>
<td>Summary</td>
<td>Increased personnel and improved monitoring technology at immigrant checkpoints. Required attorney general and FBI to provide state and INS with access to specified criminal histories. Broadened scope of aliens inadmissible or deportable for terrorism.</td>
<td>Transferred functions of INS of the Department of Justice to the Department of Homeland Security (DHS). At the DHS, the Directorate of Border and Transportation Security and the U.S. Citizenship and Immigration Services took on immigrant enforcement and immigration service functions, respectively.</td>
<td>Established federal restrictions on state-issued driver's licenses and ID cards, and denied them to undocumented aliens. Enhanced procedural requirements in asylum-granting procedures. Granted Homeland Security additional authority to construct additional barriers and roads at border.</td>
<td>Criminalized unlawful presence and the assistance of undocumented immigrants. Increased penalties on employers hiring unauthorized immigrants and imposed requirement for the verification of employees' Social Security numbers. Required state and local authorities' enforcement of federal immigration law. Funding for an extended border fence.</td>
<td>Authorized construction of 700-mile border fence.</td>
<td></td>
</tr>
</tbody>
</table>

Source: Author's compilation based on data from Wray (2003), Hufbauer et al. (2003), and U.S. House of Representatives (2003).
Table 7A.3  Summary of Immigration Reform Legislation and Executive Actions (2009 to 2010)

<table>
<thead>
<tr>
<th>Name of Act</th>
<th>Date</th>
<th>Status</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>(CIR ASAP).</td>
<td></td>
<td></td>
<td>Requires minimal conditions for immigration enforcement and detention.</td>
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<td></td>
<td>April 29, 2010</td>
<td></td>
<td>Establishes non-immigrant status for undocumented immigrants with possibility of naturalization.</td>
</tr>
<tr>
<td>Justice Department Lawsuit against State of Arizona to enjoin implementation</td>
<td>July 6, 2010</td>
<td></td>
<td>Establishes eligibility for legalization for undocumented immigrants in eight years if they learn English, do not commit a crime, and pay taxes.</td>
</tr>
<tr>
<td>of SB 1070 in District Court of Arizona.</td>
<td></td>
<td></td>
<td>Create biometric Social Security cards.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Increase federal funding for border security.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Invalidates SB 1070 and prohibits its implementation because of its violation of Supremacy Clause of U.S. Constitution.</td>
</tr>
<tr>
<td>National Defense Authorization Act for Fiscal Year 2011 (pledge by Senator</td>
<td>August 13, 2010</td>
<td>Passed</td>
<td>Places $600 million in supplemental funding for enhanced law enforcement and border security (additional staffing, infrastructure and technology) along the Southwest border.</td>
</tr>
<tr>
<td>Reid to attach Development, Relief, and Education for Alien Minors (DREAM)</td>
<td></td>
<td></td>
<td>Enhances border and internal immigration law enforcement.</td>
</tr>
<tr>
<td>Act (DREAM Act)</td>
<td></td>
<td></td>
<td>Authorization of the status of undocumented minors with degree of higher education or military service (two years) to conditional non-immigrant status, with possibility of permanent residence.</td>
</tr>
<tr>
<td>Act of 2010</td>
<td>September 21, 2010</td>
<td>Cloture not invoked in Senate</td>
<td>Agjobs Act (legalizes undocumented farmworkers and reforms farm-worker visas).</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>DREAM Act.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Uniting American Families Act [recognition of permanent partners].</td>
</tr>
<tr>
<td>Removal Clarification Act of 2010 [includes Development, Relief, and</td>
<td>December 18, 2010</td>
<td>Passage of bill only in House</td>
<td>Enhances border and internal immigration law enforcement.</td>
</tr>
<tr>
<td>Education for Alien Minors (DREAM Act) Act of 2010]</td>
<td></td>
<td></td>
<td>Authorization the adjustment and subsequent extension of the status of undocumented minors with degree of higher education or military service (two years) to conditional non-immigrant status, with possibility of permanent residence.</td>
</tr>
</tbody>
</table>


Thanks to the Russell Sage Foundation, the Center for Comparative Immigration Studies, and the UCS Board on Research for support for this project. David Keyes, Micah Gell-Redman, Gary Lee, and John Whittemore provided invaluable research assistance. Edward Alden, Wayne Cornelius, Zoltan Hajnal, Minh Ho, Tom Medvetz, Stanley Skrentny, members of the Obama Agenda Project, and external reviewers provided helpful conversations and helpful comments. Finally, I would like to give special thanks to all of the immigration reform insiders, on both sides of the issue, who were so generous with their time in answering my questions.

NOTES

1. In the Senate’s 2007 bill, Obama cosponsored an amendment to maintain immigration visas based on family reunification, arguing that visas based on skills preferences would hurt Latinos (Washington Post Votes Database 2010).
2. The Democratic Leadership Council has given strong support to the policies of Obama’s Department of Homeland Security secretary, Janet Napolitano, implemented when she was governor of Arizona (Democratic Leadership Council 2008).

3. At an event at the Center for American Progress on December 16, 2009, Labor Secretary Hilda Solis and Commerce Secretary Gary Locke also made the economic argument for immigration reform by saying that it will strengthen pay and benefits for all workers and allow collection of billions in taxes (2009).

4. In the 1990s, Senator Alan Simpson (R-WY) led a failed effort to reduce legal immigration by 135,000 to 540,000 a year. A 1996 effort to limit legal immigrants’ access to various welfare programs succeeded, though much of it was restored in 1998 (Graham 2002; Gimpel and Edwards 1999; Wroe 2008).

5. One can see an analogous political dynamic in the politics of affirmative action. In a study that I conducted during the 1990s, I asked Republican congressional staffers why they did not follow through on their promises to end affirmative action. I was told that Republicans were divided, with the majority fearing that ending affirmative action would make them appear racist (Skrentny 2001).

6. The unworthiness of illegal migrants could also be seen when the issue intersected with Obama’s health care reform effort. Though taxpayers have subsidized illegal immigrants for decades through Medicaid payments to hospitals, especially by reimbursing hospitals for their pregnancies (Dubard and Massing 2007), these payments were obscure and the process opaque. Yet the issue of taxpayer funding of illegal immigrants’ health care exploded during Obama’s health care speech to Congress when Representative Joe Wilson (R-SC) yelled, “You lie!” after Obama claimed that undocumented immigrants would be ineligible for benefits in the new health care plan (MacGillis 2009). In fact the plan excluded undocumented immigrants, but many Democrats believed that more stringent exclusions were needed. Democrats countered that increased controls were unnecessary, costly, and caused burdens to citizens. Conservative talk radio hosts rallied behind Wilson, and within just a few days, Obama gave in. He sought a tougher position, banning illegal aliens from even buying insurance on the exchanges the program would create.

7. More specifically, a poll conducted by ABC News / Washington Post in April 2009 found that a plurality of Americans favored a pathway to citizenship for undocumented migrants (beating out two other options—letting them stay as guest-workers and deporting them (44, 21, and 30 percent, respectively). CBS News/New York Times found in the same month that 61 percent of Americans favored a pathway to legal residence if undocumented migrants paid a fine. Majorities of Republicans also favor conditional legalization (see Polling Report 2010; also see Pew Research Center for the People and the Press 2007). In December 2009, a Benenson Strategy Group poll of independent voters found that 67 percent supported passage of “comprehensive immigration reform” and 72 percent supported conditional legalization. When offered the choice of conditional legalization, temporary stay, or deportation, 61 percent supported conditional legalization, 10 percent supported temporary stay, and 27 percent chose “they must leave the country” (American Voice 2010).

8. Business groups had been active on immigration reform, but mostly focused on increasing legal opportunities for foreign workers to come to the United States. For example, the U.S. Chamber of Commerce helped sponsor a study showing the benefits of increased immigration of the highly skilled (2010). There are some business interests who support legalization, however, including ImmigrationWorks USA, a federation of small business owners led by prominent pro-reform advocate Tamar Jacoby.

9. One element in the Schumer bill, the biometric Social Security card for all Americans, may bring new groups to the bargaining table. The idea has been promoted before, such as after the terrorist attack of September 11, 2001, and by both pro-reform forces (including Senators Diane Feinstein [D-CA] and center-left experts such as the Migration Policy Institute and former Immigration and Naturalization Service commissioners Doris Meissner, who served under Clinton, and James Ziglar, who served under George W. Bush), as well as by immigration restriction organizations such as FAIR. Feinstein’s support came as early as 1997 (Bernstein 1997). The Migration Policy Institute created the bipartisan Independent Task Force on Immigration and America’s Future, made up mainly of pro-reform forces, which recommended a national biometric Social Security card in 2006. FAIR has an elaborate proposal on their website that includes biometric identifiers for all Americans (see FAIR 2002). But national ID cards have long been controversial in the United States because of privacy and civil liberties concerns (Eaton 1986). The American Civil Liberties Union (ACLU) organized a very diverse coalition to sign on to an April 23, 2010, letter to the reform leaders opposing the biometric card requirement in the Schumer proposal, in which it states that “a National ID would not only violate privacy by helping to consolidate data and facilitate tracking of individuals, it would bring government into the very center of our lives by serving as a government permission slip needed by everyone in order to work” (ACLU 2010). Joining the ACLU are the Americans for Tax Reform, the Consumer Federation of America, and a variety of privacy organizations.


11. Supporters of the grand bargain have been reluctant to support DREAM or AgJOBS alone or paired in a small reform bill in the past because they believed passage would make it less likely to pass other reforms, and particu-
larly a mass (if still conditional) legalization. In a meeting with education and technology leaders in San Diego, Bob Filner (D-CA) explained that reformers resist DREAM—as well as a visa program for foreign graduates of American universities—as stand-alone bills because they hope these sweeteners will lure votes for a grand-bargain reform bill. (These remarks were made in response to my question at the CONNECT Public Policy Forum, La Jolla, California, August 11, 2010.) One advocate noted to me that most undocumented immigrants are not children or do not have children, and explained, “The problem is, it’s really hard to dial back. People view [DREAM] as a compromise—they don’t see how winning one thing, it leads to another. . . . If you start with the DREAM Act, there is such a pent-up demand for [comprehensive reform], now all of the different interests will say that if you are going to do one thing, why not the other thing?” Obama’s public statement on the DREAM Act (to Spanish-language newspaper La Opinion) suggests he continues to prefer grand-bargain reform: “I just don’t want anybody to think that if we somehow just do the DREAM Act, that that solves the problem . . . . We’ve got a bigger problem that we have to solve. We still need comprehensive immigration reform. The DREAM Act can be an important part of that, and, as I said, I’m a big supporter of that. But I also want to make sure that we don’t somehow give up on the bigger strategy” (Brown 2010b).

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Chapter 8 | Cold Front: How the Recession Stalled Obama’s Clean-Energy Agenda

Judith A. Layzer

In January 2009 President Obama took office promising to restore prosperity and reduce American dependence on foreign oil by converting the United States from a fossil-fuel to a clean-energy economy. In many respects, the country appeared ripe for such a transformation: Obama was extraordinarily popular; public support for addressing energy and climate change was strong; environmentalists were unified; industry was divided and many prominent CEOs advocated limits on greenhouse-gas emissions; and the conservative opposition was beleaguered. Initially, at least, events seem to bear out the predictions of optimistic pundits: following a frenzied push by Speaker of the House Nancy Pelosi, as well as by Obama and his top aides, in June 2009 a comprehensive energy and climate-change bill narrowly passed the House of Representatives. But hopes were dashed in the summer of 2010, when a companion bill foundered in the Senate, derailed by the prolonged recession, as well as an extended and rancorous debate over health care and a resurgent conservative movement.

The president has not relented exclusively on legislation to achieve his goals, however; like his predecessors, he has employed an aggressive administrative strategy in pursuing his energy and environmental policy objectives. The White House used the stimulus package and a series of executive orders to transform the primary mission of the Department of Energy (DOE) from managing the cleanup of nuclear weapons sites to promoting energy efficiency and renewable fuels. More important, Obama’s Environmental Protection Agency (EPA) has taken a series of steps toward curbing greenhouse-gas emissions under the Clean Air Act. These