



Compromise or second-class status? 'Legalization' vs. 'citizenship'

By Carrie Dann – July 12th, 2013

As the Senate and the GOP-led House remain at loggerheads over immigration reform, some Republicans have floated the idea of allowing most undocumented immigrants to gain legal status but not full American citizenship.

The logic goes like this: Many Republicans say that citizenship is a bridge too far and would inappropriately reward lawbreakers; some openly claim that undocumented immigrants, if given the right to vote, would overwhelmingly support Democrats. Supporters of the reform effort want a humane and pragmatic way to allow undocumented immigrants to stay in the United States to contribute to the economy and keep their families together. Almost everyone professes to want those in the country illegally “out of the shadows.”

OK, so what might a middle ground between legalization and citizenship look like? What does “legalization” even mean? And would it be constitutional or fair? Or politically feasible?

On that last count, very probably not. Democrats are united in saying “citizenship or bust,” saying that they’ll scuttle any bill without a full path to citizenship rights – including voting rights and eligibility to run for public office.

Asked about the idea of legalization without citizenship after a meeting with House Democrats, key Senate leader Chuck Schumer bluntly called such an idea “not American” and said flatly “it will not happen.”

Will the GOP's future fortunes in "national contests" be "increasingly dim" if they don't change course on immigration reform, as The Washington Post's Eugene Robinson suggests in his latest column? Eugene Robinson, along with former DLC Chair Harold Ford Jr., GOP strategist Steve Schmidt and "Meet the Press" moderator David Gregory discuss.

Still, some House Republicans have indicated this week that passing some type of “legalization” might be the only feasible option in the lower chamber.

So what exactly does “legalization” mean?

“Much like the way people have used the term ‘comprehensive reform,’ it kind of depends on who’s saying it,” says Marshall Fitz, the director of immigration policy for the liberal Center for American Progress.

For the more conservative members of Congress, legalization could mean some kind of a renewable legal status that would free individuals from the threat of deportation but would include a blanket ban on any formerly undocumented immigrants becoming eligible for citizenship, ever. (Sen. Ted Cruz proposed an amendment to the Senate bill that would have created such a ban; it was defeated in committee negotiations by a 5-13 vote.)

Or, like the Senate-passed legislation, Congress could mandate tough rules for undocumented immigrants that eventually lead to a green card, a stepping stone for those who want to become citizens eventually.

Some House Republicans – including Majority Leader Eric Cantor and House Judiciary Chairman Bob Goodlatte - are interested in creating a citizenship path for those brought to the United States illegally as children. And some are open to allowing newly legalized immigrants to access normal avenues to citizenship like work visas or marriage to a U.S. citizen – something Goodlatte suggested during an interview this week.

Experts say the first thing to understand about a possible new category of new, legal non-citizens is that Congress can do pretty much whatever it wants to do about naturalization law under the Constitution.

“Congress has very broad plenary powers with respect to immigration,” says Paul Virtue, former general counsel for the U.S. Immigration and Naturalization Service and now an immigration lawyer at law firm Baker & McKenzie. “A person is only entitled to U.S. citizenship as a matter of constitutional right if they were born here and at the time they were born they were subject of the jurisdiction of the United States.”

In other words, there’s no constitutional right to citizenship for those born abroad. Period. So Congress could theoretically pass a law that barred previously undocumented immigrants from eligibility for citizenship – at least for some.

“The federal government has the power to set standards for naturalization, so if they set a standard and that say some people cannot naturalize, I don’t see how that’s unconstitutional,” says Alex Nowrasteh, an immigration policy expert at the libertarian Cato Institute.

But – as one might expect for such a complicated issue – there could be the potential for legal challenges, depending on how the law is written.

Virtue says that a previously undocumented immigrant who got a green card through employment or marriage could argue that he or she has been discriminated against if barred from citizenship.

“I can imagine a possible equal protection challenge if Congress were to place a limitation on naturalization for a person who is a permanent resident but at one time was out of status in the United States,” he said.

Fitz, with the Center for American Progress, agrees – and also argues that the idea of legalization without citizenship isn't particularly popular.

A Pew Research Center poll earlier this year found that 43 percent of Americans believe that undocumented immigrants should eventually be eligible for citizenship, while 27 percent say they should not be allowed to stay in the country legally at all. But less than a quarter – just 24 percent – say that undocumented immigrants should be permitted to remain in the country permanently but should not be able to become American citizens.

“It's seen as the great equalizer,” Fitz says of full citizenship. “It's seen as the factor that ensures that everybody is playing by the same rules and is carrying the same rights and responsibilities.”

It's clear from Democrats that blunt limitations on citizenship are a political non-starter.

“Without a path to citizenship there is not going to be a bill, there can't be a bill,” Schumer told reporters last week.

Still, at least some pro-reform advocates say that some type of legalization measure – with some exceptions – is at least better than nothing.

Cato's Nowrasteh argues that, while citizenship is a top priority for Hispanic outreach groups, legal status would get most of the way to a better life for undocumented immigrants who live in fear of deportation.

“If we want to end the deportations of 400,000 people a year, if you want to stop pulling families apart, if you want to stop ruining lives, the most important thing is to legalize the people here,” he said. “The most important documents that an unlawful immigrant will need are permission to work [and] a driver's license. A voter ID card, in terms of day-to-day life, is way down on the list of importance and we shouldn't hold up immigration reform just because there are some groups that want them to be able to vote.”