

## How the immigration deal got made

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April 17, 2013 05:03 AM EDT

The meeting was supposed to be a half-hour update for immigration reform proponents — but they weren't about to let the Democratic senators get off that easily.

The advocates were furious that Democrats might cave to Republican demands to make the pathway to citizenship contingent upon border security benchmarks, including the sign off of governors from southwestern states. They felt locked out of the process. And now, they had no idea what the negotiators were trading away just weeks before the Gang of Eight's immigration bill was slated to be publicly released.

Frank Sharry, a longtime proponent of a comprehensive bill, aggressively protested the border language to Democratic Sens. Chuck Schumer, Dick Durbin and Robert Menendez — and as a whole, the group warned that if an anti-reform governor like Arizona's Jan Brewer were given veto power, the emerging proposal would be a “big problem for us.”

Schumer stayed at the February session an extra 40 minutes, even missing his flight back to New York, to reassure advocates that they weren't being sold out. But he also advised them to step back in line: “This is what we have to do to get a path to citizenship. You have to understand that.”

The intense back-channel talks between members, staffers and outside groups have produced the most sweeping immigration bill in six years. The legislation comes after weeks of tense member-level meetings — often with powerful special interests they had to keep at bay in order to craft a fragile, bipartisan coalition. The deal required painful compromises, suffered near breakdowns and endured cooling-off periods, including when the group walked away from the negotiating table for part of the Easter recess before re-engaging in the horse trading.

Powerful aides to several senators, particularly to Schumer and Sen. Marco Rubio (R-Fla.), pieced together a compromise driven as much by trying to get the policy right as by giving the senators a way to sell it politically.

Rubio emerged as a source of constant attention, concern and lobbying within the group. Republicans and Democrats were desperate to keep him in the fold, convinced that they needed his support to sell the proposal to deeply skeptical conservatives.

“By the way, tell your boss he already paid for the caterer, he's got to go through with the wedding now,” Schumer's chief aide Leon Fresco, fired off in an email to Rubio's

negotiator, Enrique Gonzalez, when it looked like the Florida Republican was getting wobbly late last month.

President Barack Obama was forced to step in and personally convince Republicans that he was acting in good faith after the apparently inadvertently released draft of a White House bill.

After 24 meetings among senators themselves and marathon sessions between staff for months, the senators struck a deal that, if passed, would enact the most significant changes to immigration laws in nearly three decades. But to get there, they've had to cajole their longtime allies to get behind the effort and aggressively move to limit defections from major players who have the power to stop the bill in its tracks. And they went to great lengths to prevent media leaks, even instituting a self-imposed rule to thwart the press from staking out their consequential meetings.

"There is always tense times in these kinds of things," said Sen. John McCain (R-Ariz.), a leader of the group. "But there was always a commitment to get things done."

This account of the behind-the-scenes drama that culminated Tuesday with the release of a bipartisan bill was drawn from dozens of interviews with key players at the White House and in Congress who were directly involved in the talks.

## **Recruiting Rubio**

Nobody would have predicted it a year ago, when the leading Republican presidential candidate was touting "self-deportation" as a solution for dealing with the country's undocumented population.

But Obama's 40-percentage-point win among Hispanics changed the dynamic, literally overnight. Top conservative pundits, such as Sean Hannity and Bill O'Reilly, removed a major obstacle when they endorsed a pathway to citizenship. Even Republican Party leaders suggested it was time to take up the issue.

And the major Republican players on immigration, after years of distancing themselves from Democratic proponents of reform, wanted to give it another go.

"We're getting the band back together," Sen. Lindsey Graham (R-S.C.) told Schumer in a phone call the weekend after the November election, referring to the 2007 group that worked unsuccessfully for a comprehensive bill. Schumer claimed his heart went "pitter-patter" when he heard McCain would be involved.

And yet, the same circle of negotiators from past reform efforts just wouldn't do.

The experience from 2007 was seared into memories, studied and analyzed for clues of past mistakes and how proponents could make it right the next time. The politics in 2013 for Republicans supportive of immigration reform were as favorable as they had

ever been, diminishing the odds that a fevered, impassioned right wing would scuttle the reform effort before it even started. McCain and Graham knew the issue inside and out, but they lacked gravitas with conservatives.

The group needed a protection policy, and top Democrats and Republicans came up with the same solution: Recruit Rubio.

Senate Minority Leader Mitch McConnell (R-Ky.) urged Graham and McCain to include Rubio in the talks, while Senate Majority Whip Dick Durbin (D-Ill.) lobbied Rubio at the Senate gym.

The tea party darling and 2016 presidential prospect pushed his own version of the DREAM Act to legalize young undocumented immigrants last year, but like most Republicans, he had his doubts about a comprehensive approach to overhauling the system and favored dealing with the issues one by one.

Durbin told Rubio that a pathway to citizenship needed to be a central part of the talks. If that's the case, Rubio responded, then tougher border security measures must be part of the plan, and the cost of legalizing 11 million undocumented immigrants needed to undergo a rigorous review as well.

"He said [a pathway to citizenship] would have to be under some pretty strict circumstances, and I said, 'Let's talk,'" Durbin recalled on Tuesday.

Thus, they had their first deal — one in a series of concessions, allowances and considerations that Rubio would secure from Democrats and Republicans over the next three months on policy, politics and PR strategy, all with a single-minded goal of keeping him on board and conservatives at bay.

The negotiators rounded out the group with two freshman senators whose home states underscored the imperative of getting something done. Jeff Flake (R-Ariz.), as a border-state official, was one of the original architects of comprehensive immigration reform during his time in the House. And Michael Bennet (D-Colo.) owed his election victory to Hispanic voters, who rewarded him for his full-throated endorsement of immigration reform on the 2010 campaign trail when even other Democrats weren't talking it up.

The group tried to expand to 10 members, but Sen. Mike Lee (R-Utah) clashed with McCain over whether to do a comprehensive bill or a piecemeal approach. Had Lee joined, Democrats were prepared to recruit Sen. Amy Klobuchar (D-Minn.).

But in retrospect, it turned out to be the right mix of liberals and conservatives, veterans and newcomers, taskmasters and political tacticians.

Schumer spent time early on assuring the group that his party, including Obama, didn't want to jam Republicans. They wanted a solution, not a political issue, for the next election. The process would be fair, Schumer said, and each senator had an equal vote

inside the negotiating room. In a subtle nod to that political equanimity, they alternated meetings between McCain's office and Schumer's office, and sometimes met off the Senate floor during votes.

McCain forced the group to work quickly, assuming that the political will to get something done would diminish with each passing week. And Schumer swore that the negotiations would not become a repeat of the 2009 bipartisan health care talks led by Sen. Max Baucus (D-Mont.) that dragged on for months. No media stakeouts at each meeting, Schumer insisted.

"This isn't Baucus Beach," a senior Democratic aide said, referring to the area outside Baucus's office where reporters camped out during the health care talks and harangued senators for details.

The group spoke so frequently that Schumer memorized the seven other senator's phone numbers. They even developed their own inside jokes.

In one of the first meetings, Schumer was reading aloud the agenda when his chief immigration aide, Leon Fresco, a precocious Cuban-American lawyer from Miami who approached negotiating sessions like they were debate camp, piped up to correct his boss after he had misspoke.

"Shut up, Leon," McCain told Fresco, prompting the group to erupt in laughter. McCain repeated that same line — "Shut up, Leon" — whenever Schumer opened the meetings with a review of the agenda.

Fresco turned out to be a dominant force in the talks, as did Rubio aide Gonzalez, another Hispanic-American immigration attorney from Florida whom Rubio hired earlier this year to represent him in the talks. The two became friendly as they haggled over dinner with the rest of the Senate aides, a mix of Hill newcomers like them and low-key immigration veterans like Kerri Talbot, who represented Menendez (D-N.J.), and Joe Zogby, counsel to Durbin.

Fresco came to Schumer in 2009 on the recommendation of fellow Yale Law School classmate Serena Hoy, a top immigration aide to Senate Majority Leader Harry Reid (D-Nev.). After immigration talks failed in 2010, Fresco ingratiated himself with the press-savvy Schumer by coming up with sure-fire media hits. He tipped off the senator to a \$45 baggage carry-on fee instituted by Spirit Airlines, which Fresco flew back and forth to Miami, and Schumer promptly introduced a bill to ban it, garnering blanket coverage.

Fresco, who Schumer called "my immigration genius," brought that political eye to the talks, repeatedly coming up with solutions that allowed both parties to claim victory.

### **"Brutal" talks almost fall apart**

Just as the group moved forward internally, an administration slip-up pulled them back.

The leak of the White House draft bill to USA Today in February seemed to confirm the GOP's worst fears that Obama didn't really want the group to succeed. Schumer felt blindsided and Rubio declared the liberal document "dead on arrival" in the Senate.

Obama, who had a confrontational relationship with McCain and Graham since the Benghazi attacks, called the two Republicans to the White House — and in a breakthrough for the trio, they left convinced that the president would back them up.

But the next problem was just around the corner.

The group had made it a top priority to avert the same labor and business battles attracting future low-skilled foreign workers that doomed the immigration bill in 2007. Yet the issue still proved to be one of the chief obstacles again, leading to an impasse. By several accounts, it amounted to the low point in the negotiations.

"The issue at one point looked like it just stopped us cold," Durbin acknowledged.

Lawmakers had wanted wanted to issue a joint statement before they left for the Easter break saying a deal had been reached on all the major points of contention. But that never happened.

On March 20 and 21, just before the recess, the group was holed up in a conference room just off the Senate floor. Late on the night of March 20, Schumer tweaked an offer previously rejected by the GOP senators, but this time the Republicans believed they could live with it.

But labor balked.

Schumer called up Richard Trumka, head of the AFL-CIO, who told the senator, "I know you're trying. But we'd need this language changed," according to a source familiar with the call.

Labor unions began to accuse the U.S. Chamber of Commerce of not working in good faith.

Staff and the senators were drained — particularly since those talks occurred just off the Senate floor and through the night during a marathon budget voting session that went until nearly 5 a.m.

It got so bad that they took a break to cool off over the recess.

"We kinda went to our respective corners and had to rethink," Flake said, describing the talks as "brutal."

He said he thought the group "wouldn't salvage it."

“Coming back to the room and trying to hash it out — we all invested so much time and effort into this and to see it break down like that, it didn’t sit very well,” Flake said.

While negotiations stalled in Washington, four of the gang members headed to the Arizona border with Mexico — publicly keeping a positive face on the progress they were making while revealing few details on how they planned to pay for the billions expected to go to border security.

At that time, staff dialed back their negotiations to give everyone a break from the heated and marathon sessions. After the breakdown, the AFL-CIO’s Ana Avendaño, the Chamber’s Randy Johnson and Fresco continued to try and hammer out the details — and they continued to narrow their differences until they struck a March 29 agreement over a plan to balance the need for foreign workers with the concerns over costing American jobs.

Not wanting one of them to back out, at 9:30 that night from his Brooklyn home, Schumer held a conference call with Trumka, and Tom Donohue, the Chamber leader, and both said “yes.” Donahue suggested the three should grab dinner to celebrate, and Schumer offered to pay for the bill.

The Saturday after the deal was reached between the Chamber and the AFL, Schumer called White House Chief of Staff Denis McDonough, who was being briefed about the talks.

Upon learning of the deal, McDonough said: “You guys are kicking ass.”

But on Easter Sunday, Schumer was surprised when Rubio blasted out a statement saying that it was premature to consider a deal in hand, prompting media speculation that the Florida Republican was poised to drop out of the talks.

Fresco shot an email to Gonzalez later that day, urging him to keep Rubio on board. And a worried Schumer called Rubio that Monday night, and the two men spoke by phone, assuaging the New York Democrat’s fears that the Florida Republican was wavering over the proposal.

Still, there were ample issues left to resolve. But the group leaked details of the agreement to create the impression that a deal was imminent on the overall bill.

The full group did not meet again until the middle of last week when an agreement appeared to be within reach, electing instead for staff-level talks and negotiations among a smaller number of senators as they worked through the remaining sticking points over the specifics of high-tech visas and a separate agriculture-worker visa program.

As the rest of Washington and country gets a look at what the group spent months negotiating, the senators are optimistic that they struck the right balance, even as the compromises will anger many people.

Sharry, the legalization advocate, said he can now see what the negotiators were trying to do on border security.

Rubio can tell conservatives that the border will finally be secured, employers will be required to check the immigration status of their workers, and visa holders will be tracked. But Democrats can say border security benchmarks won't impede the path to citizenship.

"It is pretty clever," Sharry acknowledged this week. "They are both right."

<http://www.politico.com/story/2013/04/a-rocky-pathway-to-immigration-reform-90181.html>