15TH ANNUAL WESTERN MIGRANT STREAM FORUM

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Breakout 3

3B What Migrant Health Providers Need to Know About Immigration Policy

Track: Policy/Advocacy

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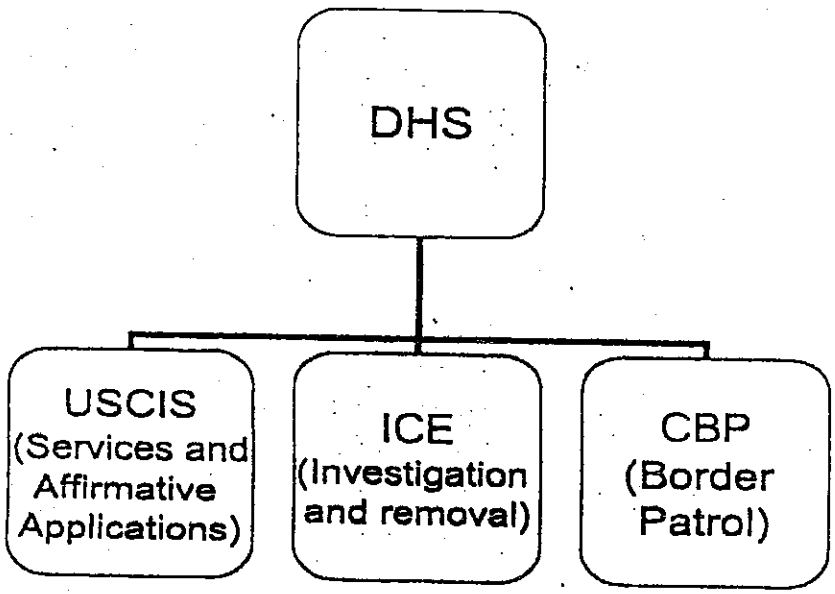
Resource ID # 6178

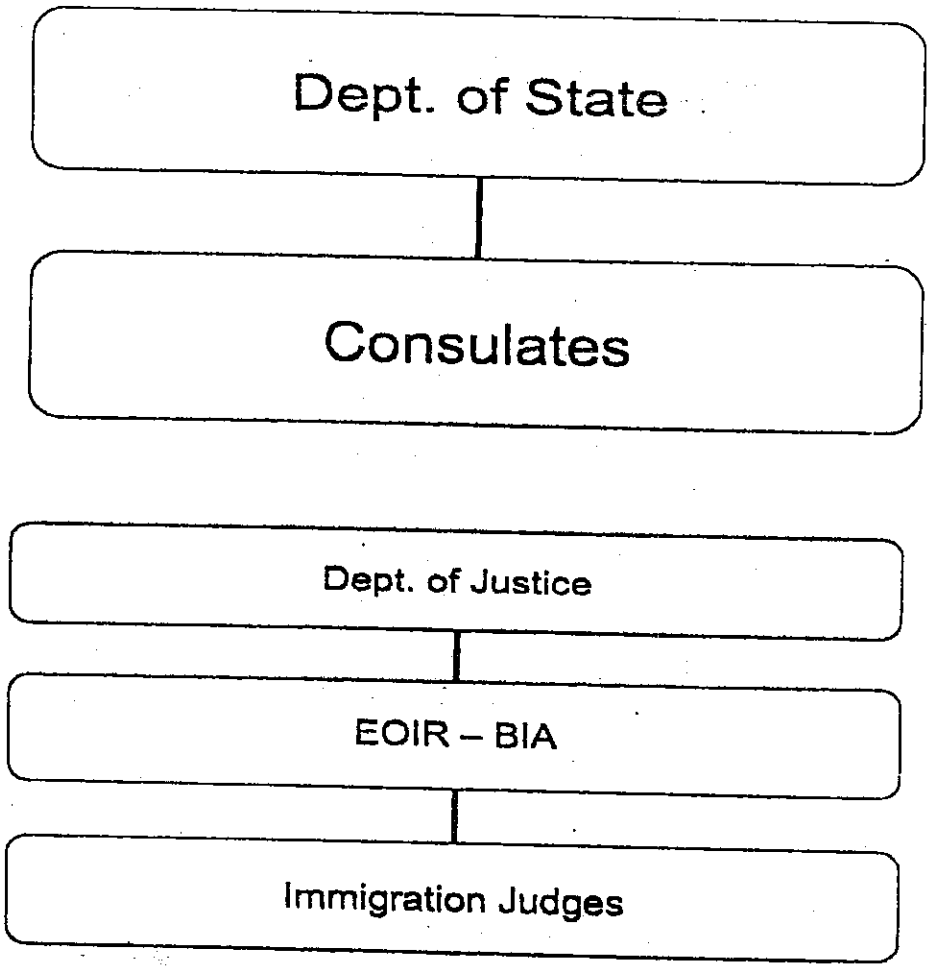
What Migrant Health Providers Need to Know About Immigration Policy

Agenda

The Immigration System (Chart)

The Immigration System





IMMIGRATION FOR FAMILIES

The most common way for people to immigrate to the United States is through a relative. Only United States Citizens or Lawful Permanent Residents (green card holders) over 21 years old can file a family visa petition for their relatives. The persons who petition for their relatives are called *petitioners* and the persons for whom the petition is filed are called *beneficiaries.* The laws of the United States do not recognize polygamy so a United States citizen or a resident can only petition for one spouse.

Who can a U.S. Citizen petition for?

U.S. citizens can file a family visa petition for their spouses, their parents, their children and their brothers or sisters.

Who can a Lawful Permanent Resident (green card holder) petition for?

Lawful Permanent Residents (green card holders) can file a family visa petition for their spouses and their unmarried or divorced children.

How does the family visa process work?

The family visa process is a two-step process. In the first step the petitioner must file a family visa petition (Form I-130) and in the second step the beneficiary must file a petition for a green card (Form I-485).

Immediate relatives can do the two steps at the same time, the non-immediate relatives, must first file the family visa petition, wait for an approval and then wait until they are eligible to apply for a green card.

Spouses, children under 21 and parents of U.S. citizens are classified as immediate relatives. Married children, children over 21 and siblings of U.S. citizens are considered non-immediate relatives.

Spouses and children of Lawful Permanent Residents are also considered non-immediate relatives.

Over please ⟶

How long does a beneficiary have to wait to get a green card?

Spouses, children under 21 and parents of U.S. citizens don't have to wait to apply for a green card based on their relationship to the petitioner. This process may take several months.

Married children, children over 21 and siblings of U.S. Citizens have to wait several years to be able to apply for a green card after they receive an approval for the family visa petition.

Spouses and children of Lawful Permanent Residents also have to wait several years to be able to apply for a green card after they have received an approval for the family visa petition.

What happens if my spouse or my parent mistreats me and refuses to file papers for me?

If you are from another country and your spouse or parent is hurting you or your kids and threatening you with deportation or taking away your kids, you might be eligible to obtain immigration status without having to depend on your spouse or parent.

There are several options under immigration law that allow you to apply for immigration status on your own for you and your children.

What are the consequences for someone who commits domestic violence?

Domestic Violence is considered a crime under the laws of the United States and a person who commits domestic violence might be imprisoned and put in deportation proceedings. The same applies to a person who violates a protection order.

For more information contact the Northwest Immigrant Rights Project's Information Line.
If you live in Western Washington you can call our Seattle office on Tuesdays or Thursdays at 10 a.m. at 206-587-4009 or 1-800-445-5771.

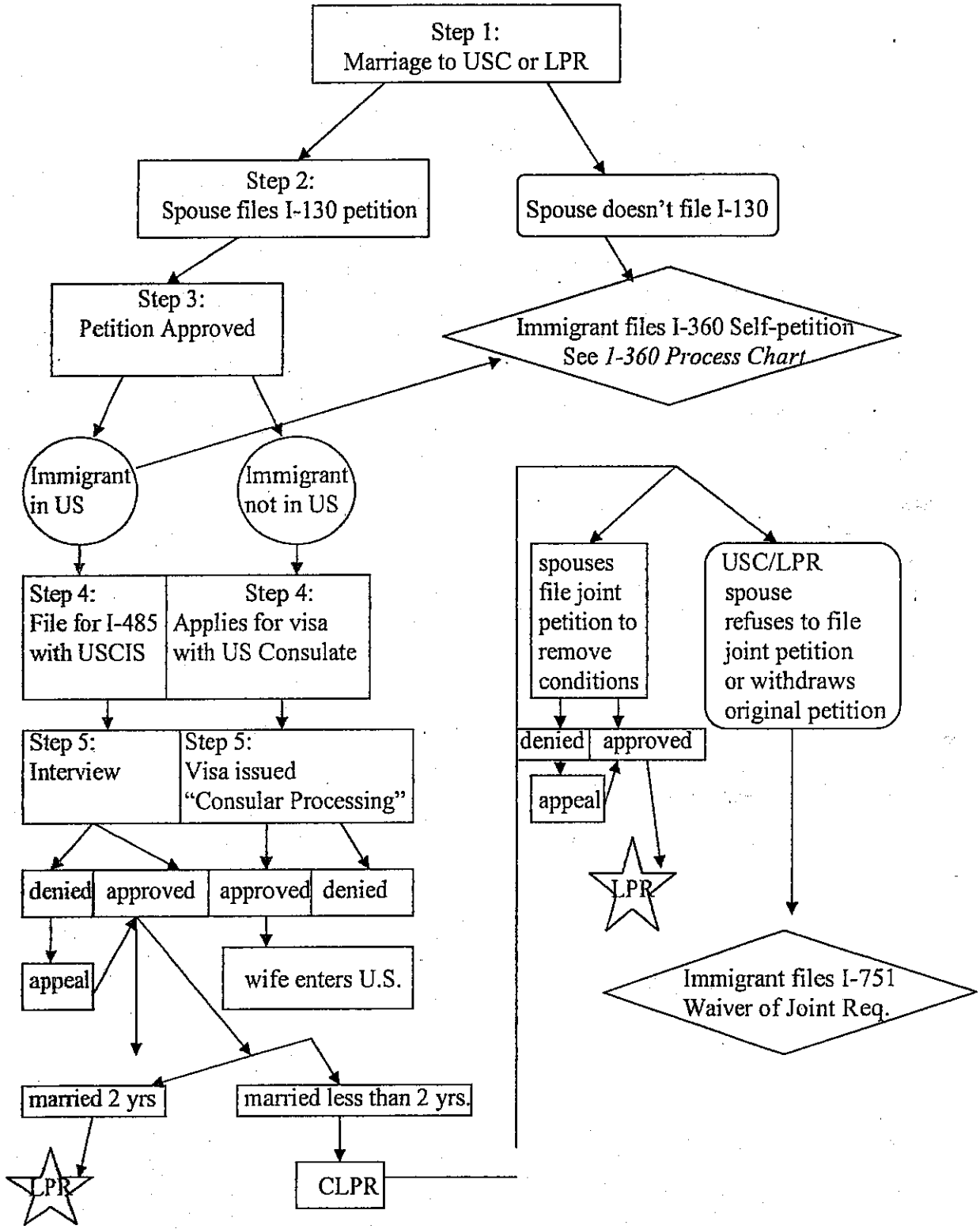
If you live in Eastern Washington you can call our Granger office Mondays through Fridays from 9 a.m. to 4 p.m. at 509-854-2100 or 1-888-756-3641

If you are detained by Immigration Authorities, you can contact our Tacoma office at (253) 383-0519

If you are in a dangerous situation dial 9-1-1 or call the Washington State Domestic Violence Hotline at 1-800-562-6025 or the National Domestic Violence Hotline at 1-800-799-7233 TTY: 1-800-787-3224

Over please ⟶

Family Visa Process:



I-360 Self-Petitions and I-751 Waivers At A Glance

This information is not a substitute for immigration legal advice. If you have an immigrant client, please seek immigration legal advice in determining your client's specific immigration options.

Who is eligible to file an I-360 Self-Petition?

- Spouse or child(ren) of United States citizen (USC) or lawful permanent resident (LPR);
- Who (if a spouse) entered into marriage in good faith; and
- Was subjected to physical battering and/or extreme cruelty in the United States by the spouse or parent; and
- Shared a joint residence with the abusive spouse or parent; and
- Is a person of good moral character?

IMPORTANT:

- If the self-petitioner has divorced her spouse, she must file a self-petition within two years of the divorce and there must be a connection between the domestic violence and the divorce.
- If the self-petitioners' spouse has lost legal permanent resident status, she must file a self-petition within two years of the loss of status of her spouse and the loss of status must be related to the domestic violence.
- A self-petition for a child of a USC/LPR parent must be filed before that child turns 21 in order for the child to be able to adjust her/his status based on the self-petition at a later date. A child included as a derivative in her/his parent's self-petition before that child turns 21 will be allowed to adjust her/his status based on the self-petition, even after that child turns 21.

Who is eligible to file an I-751 waiver?

Conditional residence is the immigration status granted to an immigrant who has been married to a United States citizen for less than two years at the time the citizen spouse files immigration papers on behalf of the immigrant spouse. The immigrant spouse will be a conditional resident for two years from the time immigration papers are filed. At the end of the two years, the couple must file an application with the INS to remove the condition on the immigrant spouse's residence. The conditional resident may file a waiver of the joint application requirement if s/he can show that s/he entered into the marriage in good faith and:

- That the marriage was terminated in divorce;
- That s/he was subjected to physical battering and/or extreme mental cruelty; and/or
- That s/he would suffer extreme hardship if returned to her/his country of origin.

Prepared by Northwest Immigrant Rights Project
909 Eighth Avenue, Seattle, WA 98104, (206) 587-4009
September 2001

ELIGIBILITY TO SELF-PETITION AND TIME SENSITIVE MATTERS

WHO IS ELIGIBLE TO SELF-PETITION

- Spouse and children who have been "battered or subjected to extreme cruelty" by a U.S. citizen (USC) or Lawful Permanent Resident (LPR) spouse or parent.

- The parent of a child who has been abused by his/her USC/LPR spouse, whether or not the spouse has also been abused.

- A battered spouse may include her/his children in the petition whether or not the children themselves have been subjected to abuse.

WHAT ELSE MUST THE SELF-PETITIONER SHOW?

- That s/he is a person of good moral character

- That s/he entered into the marriage in good faith (abused children need not show that the parent's qualifying marriage was entered into in good faith)

- That s/he is or was married to the USC/LPR -

  - A battered immigrant may file a Self-Petition for up to two years after divorcing her/his abusive USC or LPR spouse where the divorce is "connected" to domestic violence

  - A battered immigrant may file a Self-Petition for up to two years after her/his abuser is ordered removed (deported) or loses his/her immigration status where the loss of status is "related" to domestic violence

- That s/he has resided with the abuser

TIME SENSITIVE MATTERS

The following situations necessitate immediate filing or a request for expedited approval of a Self-Petition:

- **Divorce**

A battered immigrant may file a Self-Petition for up to two years after divorcing her/his abuser where the divorce is "connected" to domestic violence. A Self-Petition for a step-child should be filed immediately where divorce threatens to eliminate the relationship between the step-child and the step-parent.

- **Rescission of Abuser's Status**

A battered immigrant may file a Self-Petition for up to two years after her/his abuser is ordered removed (deported) or loses his/her immigration status where the loss of status is due to an incident of domestic violence.

- ***Aging-Out***

A Self-Petition for a child of a USC/LPR parent must be filed before that child turns 21 in order for the child to be able to adjust her/his status based on the Self-Petition at a later date. A child included in her/his parent's Self-Petition before that child turns 21 will be allowed to adjust her/his status based on the Self-Petition even after that child turns 21.

- **Death of the abuser (only USC)**

If the USC abuser dies, the Self-Petition must be filed within 2 years of the death of the abuser.

T (Trafficking) Visa Eligibility

To be eligible for a trafficking visa, an applicant must show that

(1) she or he is or has been a victim of a severe form of trafficking,

(2) is physically present in the U.S. or at a port of entry on account of trafficking,

(3) has complied with any reasonable request for assistance in investigating or prosecuting trafficking (if 15 or older), and

(4) would suffer extreme hardship involving unusual and sever harm upon removal. The T visa regulations add an additional requirement of contact with a law enforcement agency (LEA).

I. What constitutes a victim of a "severe form of trafficking?"

A. Forced labor

- Recruited, harbored, transported, provided, or obtained for labor or services; **AND**
- Use of force, fraud, or coercion for the purpose of subjecting the victim to involuntary servitude, peonage, debt bondage, or slavery.
  - Includes when traffickers **threaten** "serious harm or physical restraint **against any person**; any scheme, plan or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or the abuse or threatened abuse of the legal process"
  - **Debt bondage** means " the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined." (8 C.F.R. §214.11(a)).
  - **Involuntary servitude** means "a condition of servitude induced by means of any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or the abuse or threatened abuse of legal process" (8 C.F.R. §214.11(a)).
  - **Peonage** means the "status or condition of involuntary servitude based upon real or alleged indebtedness" (8 C.F.R. §214.11(a)).

II. What does it mean to be physically presence in the US "on account of" trafficking?

A. The T visa regulations state that an applicant must show that she or he is (1) being subjected to trafficking now, (2) was "recently liberated" from such trafficking, or (3) is here because of past trafficking and her continued presence in the United Stated is "directly related to the original trafficking" (8 C.F.R. 214.11(g)). Consequently, an applicant must show that she or he has recently been liberated from a trafficking situation.

- Applicants who were previously trafficked and remain in the US for reasons directly related to the trafficking have to show that they either
  - Were liberated by law enforcement and are continuing to assist **OR**
  - Escaped before law enforcement became involved and had no clear chance to leave the US in the interim (in light of individual circumstances) (8 C.F.R. § 214.11(g)(2)).
- Applicants who were previously trafficked, left the US, and then returned are presumed ineligible unless they can show their presence "is the result of continued victimization at the hands of the traffickers or a new incident" (8 C.F.R. § 214.11(g)(3)).

III. What does it mean to have complied with any "reasonable request for assistance in the investigation or prosecution" of a Law Enforcement Agency (LEA)?

A. An applicant under 15 years old do **NOT** have to satisfy this requirement.

B. For an applicant over 15 years old...

- Definition of "**reasonable**"
  - Based on "the totality of the circumstances taking into account general law enforcement, prosecutorial, the nature of the victimization, and the specific circumstances of the victim, including fear, severe traumatization (both mental and physical), and the age and maturity of young victims" (8 C.F.R. § 214.11(a)).
- How to show that the applicant assisted an LEA

- LEA endorsement is "**primary evidence** of compliance with law enforcement requests, although it is **NOT** required evidence (8 C.F.R. § 214.11(h)(1)).
- An applicant can submit an affidavit in lieu of an LEA endorsement, and this will be considered **secondary evidence**. This affidavit must detail specific points (8 C.F.R. § 214.11(h)(2)).
- **Qualified LEA** means any "Federal law enforcement agency that has the responsibility and authority for the detection, investigation, or prosecution of trafficking" (8 C.F.R. § 214.11(a)). This includes, but is not limited to, the FBI, INS, US Attorneys, DOJ Civil Rights and Criminal Divisions, US Marshals Service, and the Department of State's Diplomatic Security Service.

C. **An applicant who never has had contact with an LEA regarding her/his experience of trafficking will NOT be eligible for T-1 nonimmigrant status** (8 C.F.R. § 214.11(h)(2)).

IV. What does extreme hardship "involving unusual and severe harm" upon removal mean, and what kind of factors are taken into account?

A. The regulations define extreme hardship as "unusual and severe harm" (8 C.F.R. §214.11(i)(1)).
- Hardship to people other than the applicant is **irrelevant**.
- "Current or future economic detriment, or the lack of, or disruption to, social or economic opportunities" will **NOT** be sufficient (8 C.F.R. § 214.11(i)(1)).

B. Examples of hardship factors (for a non-exhaustive list, see 8 C.F.R. § 214.11(i)(1))
- The age and personal circumstances of the applicant.
- Serious physical or mental illness that necessitates medical or psychological attention not reasonably available in the applicant's home country.
- The reasonable expectation of the existence of laws, social practices or customs in the applicant's home country would penalize the applicant severely for having been the victim of a severe form of trafficking in persons.

C. INS will consider **special hardship factors related to trafficking**, so use documentary and expert evidence out there concerning trafficking in persons!

D. Applicants can obtain **derivative T Visas** for their spouses, children and parents if they show that either the immediate family member or the principal applicant would suffer "extreme hardship...if the immediate family member was not allowed to accompany or follow to join the principal" (8 C.F.R. § 214.11 (o)(1)(ii)).

V. Which grounds of inadmissibility can a T visa applicant waive, and which do not have waivers?

A. Grounds of Inadmissibility that **can be waived** in the national interest
- INA §212(a)(1) Health-related grounds (INA §212(d)(13)(B)(i))
- INA §212(d)(13) Public charge grounds; even if this has resulted in a final order of removal, a stay of removal will be granted (INA §212(d)(13)(B)(i))
- Criminal and other grounds if the activities were caused by, or incident to, the victimization (INA §212(d)(13)(B)(ii))

B. Grounds of Inadmissibility that can **NOT** be waived (INA §212(d)(13)(B)(ii))
- INA §212(a)(3) Security and Related Grounds (espionage, attempts to overthrow the US government, terrorist activities, voluntary membership in a totalitarian party, Nazi persecutors).
- INA §212(a)(10)(C) International Child Abductors.
- INA §212(a)(10)(E) Former Citizens who Renounced Citizenship to Avoid Taxation.

Adapted by materials prepared by Boat People SOS, Inc., prepared by the Northwest Immigrant Rights Project, October 2002.

U-VISAS

The Violence Against Women Act 2000 (VAWA II) created a new nonimmigrant visa for some battered non-citizens and other crime victims. The government has not yet issued rules on how to apply for U-visas, so we still do not know what the application process will be. Based on what the law requires, below is a list that can help people who may be eligible to apply for a U-visa gather information for their application. This is not a substitute for legal advice. Do not submit anything to the Immigration and Naturalization Service without first talking to an immigration attorney or representative.

1. Show that the person is a victim of one of the crimes listed in the law. *The list of crimes includes rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, being held hostage, involuntary servitude, kidnapping, manslaughter, and murder.*

2. Show that the criminal activity took place in the U.S. or, if not, that it violated U.S. law.

3. Show that the person knows, or if a child, the child's representative (for example, parent or guardian) knows, information concerning the criminal activity.

4. Get a letter from a federal, state, or local law enforcement official, prosecutor, judge, or authority investigating the criminal activity. This letter should state that the person applying for the U visa is being, has been, or is likely to be helpful to the investigation or prosecution of the named criminal activity. The letter may also address numbers 1-3 above. A signed statement from the official should be enough. It should include contact information for the official completing the certification.

5. Show that the person has suffered "substantial physical or mental abuse" as the result of this criminal activity.

6. List any children, spouses, or parents who will be included on the person's application, and whether they need work authorization.

7. Demonstrate economic necessity for work authorization by providing a simple list of the person's assets, income, and expenses.

Created by Northwest Immigrant Rights Project, January 2002
For more information, call 206-587-4009 or 1-800-445-5771.

U Visa Basics for Law-Enforcement Officials and Prosecutors*

What is the U visa?

The U visa was created by the Victims of Trafficking and Violence Prevention Act in October 2000. This visa gives noncitizens with temporary or no legal immigration status an incentive or reward for cooperating with law enforcement officials in the investigation and prosecution of certain criminal activity. Generally, the visa is available to noncitizens who 1) were the victims of certain crimes listed in the statute, 2) suffered substantial physical or mental abuse as a result; 3) possess information concerning the relevant criminal activity, and 4) have been helpful, are being helpful, or are likely to be helpful in the investigation or prosecution of the crime. The U visa would allow the noncitizen to remain in the country temporarily for up to three years, and, in many cases, to eventually apply for lawful permanent residence (also known as "green card" status).

What crimes are covered by the statute?

The crimes listed in the statute include the following: domestic violence, felonious assault, rape or sexual assault, torture, trafficking, incest, abusive sexual contact, prostitution, sexual exploitation, female genital mutilation, being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, blackmail, extortion, manslaughter, murder, witness tampering, obstruction of justice, perjury, or attempt, conspiracy, or solicitation to commit any of the above.

Who gives out U visas? How are law enforcement officials involved?

Federal immigration officials from the U.S. Citizenship and Immigration Service (USCIS) (formerly known as the INS) are in charge of determining who qualifies for a U visa. The role of law enforcement officials and prosecutors is to verify that the individual "has been helpful, is being helpful, or is likely to be helpful" to the investigation or prosecution of the criminal activity at issue. Law enforcement officials can do this by signing a simple certification form, which can be provided by the noncitizen victim or his or her representative. The certification verifies the individual's assistance in the criminal investigation or prosecution, but not that the individual complies with all of the other requirements of the U visa provision. A signed certification, while important, does not mean that the individual will automatically be eligible for a U visa: that determination is up to USCIS officials.

Why is the U visa good for law enforcement?

When Congress enacted the U visa provisions, it explicitly stated that its goal was to "strengthen the ability of law enforcement agencies to detect, investigate, and prosecute

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* Prepared by Jorge L. Barón, Attorney and Arthur Liman Public Interest Fellow, New Haven Legal Assistance Association, New Haven, Connecticut, and edited with permission by the Northwest Immigrant Rights Project.

cases of domestic violence, sexual assault, trafficking of aliens, and other crimes . . . ."[†] Congress also explained that the U visa would "encourage law enforcement officials to better serve immigrant crime victims and to prosecute crimes committed against aliens." Many immigrants are afraid to report criminal activity to the police for fear that they may be deported. Even immigrants with papers may fear deportation. For example, some immigrants have status as a derivative of their spouse. Without the U visa, an abused woman who was a derivative on her husband's visa likely would be deported with her abusive husband if he were convicted of domestic violence. The U visa can be an important tool for law enforcement agencies as it gives undocumented and other immigrants an incentive to report criminal activity and to cooperate with ongoing criminal investigations. Finally, as Congress itself stressed, providing temporary legal status to immigrants who have been victimized by criminal activity "comports with the humanitarian interests of the United States."

What if the investigation has ended, was unsuccessful, or is ongoing?

The statute does not place time limits regarding when the incident or investigation took place, nor does it require that the individual's cooperation result in a successful prosecution. The statute also does not require that the investigation be complete before an individual becomes eligible for a U visa. However, the statute does provide that an individual granted a U visa who later unreasonably refuses to cooperate in the criminal investigation or prosecution will not be able to adjust status to that of a permanent resident. Therefore, the individual will have a continuing incentive to cooperate with law enforcement officials even after a certification is signed and a U visa is issued.

I have heard that one cannot get a U visa at this time. Is that true?

Partially. The Department of Homeland Security has yet to issue regulations that will fully implement the U visa provisions, so it is true that actual U visas are not being given out at this time. However, USCIS is granting "interim relief" to individuals who appear to be eligible for U visas. This interim relief allows these individuals to obtain employment authorization and temporarily prevents their deportation from the U.S. until a final determination on their status can be made once the regulations are issued.

Where should an individual who may be eligible for a U visa go for assistance?

An individual who may qualify for a U visa should contact an immigration attorney as soon as possible. In Western Washington, the individual can contact Northwest Immigrant Rights Project at 206-587-4009 or 1-800-445-5771. In Eastern Washington, the individual can contact Northwest Immigrant Rights Project's Granger office at 509-854-2100 or 1-888-756-3641.

[†] The references in this paragraph are to the statement of findings and purpose in section 1513(a) of the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464.

Special Immigrant Juvenile Status (SIJS): What It Is & Who Can Apply

Special Immigrant Juvenile Status (SIJS) was added in 1990 to the Immigration and Nationality Act (INA) to permit certain undocumented juveniles to apply for Legal Permanent Residency (LPR, or green card holder). If an applicant is granted SIJS, s/he can file an Adjustment of Status (AOS) application, and if approved, will have LPR status and after a certain period of time, may apply to naturalize (i.e. become a U.S. citizen). SIJS may be a young person's best or only chance to obtain legal immigration status in the United States, and because it is an age-sensitive application, is ***very*** important to identify qualified applicants early and begin the process in a swift manner.

To be eligible for SIJS, an applicant must meet the following requirements:

(1) The juvenile must be under the jurisdiction of a juvenile court. This means that the juvenile must be declared **dependent** on a juvenile court.

(2) The juvenile must be "deemed eligible for long term foster care" **due to** abuse, neglect or abandonment. This means that the reunification with natural parents is not an option in the foreseeable future. This determination must be made explicitly by the juvenile court because of abuse, neglect, or abandonment.

(3) It must be deemed to be in the juvenile's best interest to remain in the United States. This finding must be made explicitly by the juvenile court. *This is not a standard finding made by juvenile courts, and thus the dependency attorney must specifically ask the court to make such a determination. (See "Order Regarding Minor's Eligibility For Special Immigrant Juvenile Status.")

(4) The applicant must be unmarried and under 21 years old. This requirement applies until the final adjudication of the applicant, NOT just at the time of filing.

(5) The juvenile must remain under the jurisdiction of a juvenile court and must remain eligible for long-term foster care. Again, this must be the case until the final adjudication of the juvenile's application.

NORTHWEST IMMIGRANT RIGHTS PROJECT
http://www.nwirp.org
909 8th Avenue
Seattle, WA 98104
(206) 587 4009
FAX (206) 587 4025

Where the government arrests or tries to arrest someone, or when a governmental official or police officer "just wants to talk," every person in the United States has certain basic rights. These rights apply to citizens and non-citizens alike. Be familiar with your rights, and help protect others by informing them of their rights.

KNOW YOUR RIGHTS

If any governmental official (police officer, FBI agent, Immigration official) wishes to engage you in conversation, all persons, citizens and non-citizens, have the constitutional right to remain silent and request a lawyer. You should know that *anything* you say to a police officer can be used against you. Thus, if a police officer or other governmental official wishes to ask you questions about a suspected crime, you have the right to tell the officer: **"I wish to remain silent; I want to speak to a lawyer." You do not have to say anything else, and do not sign anything.**

Some officers may be insistent, even after you tell them you wish to remain silent. **Do not say anything until you have spoken to a lawyer.**

If the police, FBI or Immigration come to your home, **you have the right to refuse them entry, unless they produce a warrant from a judge.** If they do not have a warrant, you do not have to not let the police, FBI, or Immigration into your home. You have the right to close the door. You have the right to say "I do not want to talk to you until I have spoken to a lawyer." If you give them permission, they may enter legally. If you throw the door open and wave them in you are probably giving permission. You should say politely that you do not want to speak to them, that they do not have permission to enter your home, and that if they leave a phone number, your lawyer will call them. **There are lawyers with the Public Defender Association who are on call 24 hours a day at 206-447-3900.** You may have to leave a message.

Your skin color, accent, or the language you speak are not lawful reasons for an Immigration agent or any other officer to question, detain, threaten, or arrest you. Your color or language do not legally justify a presumption that you are not a U.S. citizen. You do not have to speak to an Immigration agent, and if you do, they will usually claim later that you did so voluntarily. However, if you answer their questions, including questions about where you were born, that may give them a "reasonable suspicion" that

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you are not a citizen.
You have the right to speak to an attorney before answering any questions or signing any documents (you should NEVER sign documents without first speaking to an immigration attorney). If an Immigration agent or any other officer approaches you, the safest thing to do is to say that you don't want to talk, ask to speak with your lawyer, and remain silent. It is a crime to lie to a federal official or other law enforcement officer, about anything. It is much safer to say that you don't want to talk, and then remain silent until you contact a lawyer.

If you are accused of something that makes you deportable, you will have the right to a hearing with an Immigration Judge and the right to have an attorney represent you at that hearing and in any interview with Immigration (there are no government-paid lawyers, as there are in criminal proceedings, however). Do not give up this right. **Insist on a hearing** especially if you are detained.

Unless you have already gone through a whole proceeding and already have a final, unappealed, deportation order, the Immigration cannot just grab you and take you to the plane and deport you. You do get a day in court. Don't sign anything that gives it up.

If you are being questioned by the Immigration or police about your immigration status or about a suspected crime, tell the officer you wish to contact a lawyer at these phone numbers:

For immigration issues:	**For criminal issues:**	**To report harassment, discrimination or incidents of violence:**
Northwest Immigrant Rights Project (206) 587-4009 (800) 445-5771 Eastern WA: (509) 854-2100 (888) 756-3641	Public Defender Association (206) 447-3900.	Hate Free Zone 1-866-439-6631.

5/17/05

PRACTICE OF LAW BOARD
STATE OF WASHINGTON

COMPLAINT ABOUT THE UNAUTHORIZED PRACTICE OF LAW

Please follow these instructions in filling out this form:

- Write legibly in ink, or type.
- Attach additional pages or copies of documents as necessary.
- Sign and mail the original form to the Practice of Law Board, 2101 Fourth Avenue, Ste. 400, Seattle, WA 98121-2330
- Please keep a copy of this form for your records.

If you believe that you have been the victim of a crime or fraud, you should also contact the police or prosecuting attorney in your county or the county where the activity you are complaining about happened. You should also contact a lawyer if you need legal assistance.

If you need assistance in filling this complaint, please call the Practice of Law Board at (206) 727-8252.

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1. YOUR NAME: _____

Address: _____

City, State: _____

Zip Code: _____

Home Telephone: ( )_____

Work Telephone: ( )_____

Fax Telephone: ( )_____ _____

E-mail Address: _____

2. NAME OF PERSON OR BUSINESS YOU ARE COMPLAINING ABOUT :

_____

_____

Address: _____

City, State: _____

Zip Code: _____

Telephone: ( )_____

If you know, please include any fax telephone number, web site or Internet address, business license number, other business names, or other identifying information:

_____

_____

3. DESCRIBE YOUR COMPLAINT. BE SURE TO NOTE THE FACTS AND PERTINENT DATES AND ATTACH COPIES OF ANY RELATED DOCUMENTS. (Use a separate sheet if necessary. PLEASE do not write on the back of this form!)

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_____

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_____

4. TO YOUR KNOWLEDGE, HAS ANYONE PAID FOR THE LEGAL SERVICES ABOUT WHICH YOU ARE COMPLAINING?

yes: ____ no: ____

If yes, how do you know and how much was paid by whom? Attach copies of any fee agreement, invoices, billing statements, canceled checks, or other documents showing payment.

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5. HAVE YOU FILED A COMPLAINT ABOUT THIS PROBLEM WITH ANY LAW ENFORCEMENT AGENCY OR PROSECUTING ATTORNEY?

yes: ____ no: ____

If you have, please identify law the enforcement agency or prosecuting attorney's office, and the date you complained:

_____

_____

6. IS THERE ANY LAW SUIT OR OTHER LEGAL ACTION AGAINST ANYONE ABOUT THIS PROBLEM?

yes: ____ no: ____

If so, please state in what court; the names of the parties; any cause or court number; and its current status. Please attach copies of all related court documents and pleadings.

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7. HAVE YOU FILED A COMPLAINT ABOUT THIS PROBLEM WITH THE ATTORNEY GENERAL'S OFFICE OR ANY OTHER CONSUMER PROTECTION AGENCY?

yes: ____ no: ____

If yes, please attach copies of the complaint, any response, and all related documents. Please also indicate the current status.

In filing this complaint with the Practice of Law Board, I consent to disclosure of this complaint to the party I am complaining about.

I affirm that I have read this complaint and affirm to the best of my knowledge and belief the facts stated in the complaint are true.

_____
Signature

_____
Date

MAIL TO THE PRACTICE OF LAW BOARD OF THE STATE OF WASHINGTON.

2101 Fourth Ave., Ste. 400
Seattle, WA 98121-2330.

PLEASE BE SURE TO ENCLOSE COPIES OF ALL RELEVANT DOCUMENTS

The REAL ID Act

And

The Latino Community

NCLR
NATIONAL COUNCIL OF LA RAZA

The REAL ID Act and the Latino Community

The REAL ID Act became law in May 205. It is expected to have a broad impact on the Latino community and on all Americans who apply for driver's licenses. While there are still several questions regarding how and when the REAL ID Act will be implemented, the following is a brief summary of its main provisions.

Driver's Licenses

The REAL ID Act forces all 50 states and the District of Columbia to completely overhaul their driver's license laws and procedures. Beginning three years after the law is enacted, driver's licenses from those states which do not comply with the new federal standards cannot be used to access federal buildings, board airplanes, enter nuclear power facilities, or for any other purposes designated by the Department of Homeland Security.

The law will require states to satisfy minimum standards including fraud and tamper-resistant features, biometric identifiers, and information about each applicant's name, age. Social Security number (SSN), proof of identity, proof of state residency, and proof of legal presence in the U.S. States will have to verify with the issuing agency the documents presented by all applicants. In other words, the Department of Motor Vehicles will have to verify all birth certificates with the hospitals or agencies that issued them, all immigration documents with the DHS, all SSNs with the Social Security Administration, all utility bills or bank statements or similar documents with companies that issued them, etc. In addition, states will have to save copies of all of the documents received for a period of several years.

All applicants for new licenses and renewals will have to prove that they are U.S. citizens or legal immigrants (unfortunately, the law is poorly written so that not every category of legal immigrant will qualify).

The REAL ID Act requires states to create a multitiered system for driver's licenses. U.S. citizens, lawful permanent residents (green card holders), and asylees and refugees would have one type of license. Immigrants on temporary visas, persons with Temporary Protected Status (TPS), and other noncitizens who are in the U.S. legally will receive another type of license that expires when their visas expire (or after one year if the visa has no expiration date).

A state could also decide to issue an alternative document to people who cannot prove legal presence, but these documents will have to be distinct from all other licenses and would need to clearly indicate that they are not to be used for identification purposes.

The REAL ID Act also limits the types of documents that foreign-born persons could use to prove their identity. Only passports are permitted; immigrants could not use their national IDs, foreign-issued birth certificates, foreign driver's licenses, *matrículas*, or any other foreign-issued documents to obtain a driver's license.

The Department of Homeland Security, in consultation with the Department of Transportation and representatives of the 50 states, will have to issue final regulations to implement this bill. These provisions take effect three years after the law is enacted.

Asylum

The REAL ID Act will make it much more difficult for people fleeing persecution to obtain asylum in the U.S. It requires asylum applicants to document and prove that race, religion, nationality, membership in a particular social group, or political opinion was one "central reason" for their persecution. The immigration judge can then require the asylum applicant to provide additional corroborating evidence. In other words, this means that asylum applicants must prove their torturer's motives – which will be nearly impossible in many cases – and must be prepared to provide additional evidence to prove they were persecuted. These asylum provisions go into effect immediately.

Due Process

The REAL ID Act bars federal courts from reviewing virtually all discretionary actions of the Department of Homeland Security in the immigration arena, no matter how erroneous or groundless the decisions may be.

The REAL ID Act will also further restrict federal courts' ability to review the detention or deportation of immigrants by eliminating federal court jurisdiction for habeas corpus claims for immigrants in removal proceedings and by restricting the types of claims that immigrants can raise in federal court. In essence, the REAL ID Act cuts off the last remaining avenue of federal court review for certain immigrants.

For more information contact Michele Waslin, Director of Immigration Policy Research, at mwaslin@nclr.org or (202) 776-1735.

Overview of the McCain-Kennedy Immigration Bill

Overview of the McCain-Kennedy Immigration Bill

Set up border security "strategic planning"

- The Dept. of Homeland Security would create a national border security plan and develop a coordination plan with federal, state, local, and tribal authorities.
- DHS would be allowed to set up a border security advisory committee – it says the committee will include "stakeholders" but doesn't say who is a "stakeholder"

International border enforcement

- The United States would work with Mexico and Central American countries on immigration control in those countries (including law enforcement assistance)

Create a temporary worker program (H-5A) for non-agricultural workers

- The visa would be good for three years and could be renewed for three more years.
- Spouses and children are not included.
- Temporary workers can change employers, but if they are unemployed for 45 consecutive days they can lose their status.
- After four years of work, temporary workers could apply for lawful permanent status (green card).
- If they apply for themselves, they would have to pass an English/civics test or be enrolled in a course of study.

Create a legalization program for people without status

- A person must be in the U.S. without status as of May 12, 2005.
- The person must have worked before that date and since (including part-time work and self-employment). It does not say how many days or hours you must work.
- It appears that employment requirements can be met through education.
- Spouses and children would also be eligible.
- There are no employment requirements for people under 21.
- After six years, the person can apply for permanent residence. Requirements include: employment (same as above), medical exam, payment of taxes, background checks, selective service registration, and English/civics.
- It appears that people could still be eligible if they have a prior deportation, but criminal and security bars still apply.
- Adults would have to pay $1,000 "fines" for H-5B status and again for green cards

Family unity and visa backlog reduction

- The number of family and employment immigrant visas would be increased (but caps and backlogs would not be entirely eliminated).
- The person filling out the affidavit of support would have to have income at least at the poverty level (reducing the requirement from 125 percent of poverty).

Require electronic employment authorization verification

- The I-9 paper verification system would be replaced with an electronic system.
- Detailed information about non-citizen workers (including pay) would be collected in a database.

For more information, contact Montana People's Action.
208 E. Main, Missoula, MT, 59802, (406) 728-5297
2822 Third Avenue N., Suite 210, Billings, MT, 59101, (406) 245-6101

Comprehensive Immigration Reform (CIR)

National Immigration Law Center

IMMIGRATION LAW & POLICY

Comprehensive Immigration Reform (CIR)

House passes border and immigration enforcement bill:
Immigrants, noncitizens, even citizens face unprecedented assault on rights

IMMIGRANTS' RIGHTS UPDATE, Vol. 19, Issue 8, Dec. 22, 2005

The U.S. House of Representatives has passed a bill that would criminalize the status of millions of non-U.S. citizens, mandate that lawful immigrants convicted of minor crimes be deported, require all employers in the U.S. to use a costly and unreliable electronic system to verify the employment eligibility of all workers, and fundamentally disrupt our society and economy.

The House approved the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005

(HR 4437) on Dec. 16, 2005, by a vote of 239 to 182. Voting in favor of the bill were 203 Republicans and 36 Democrats; voting against were 164 Democrats, 17 Republicans, and 1 independent. House Judiciary Committee Chairman F. James Sensenbrenner Jr. (R-WI) had introduced the bill on Dec. 8, 2005, and his committee approved it less than two days later. The bill reached the House floor a scant eight days after its introduction.

The bill would provide no road to lawful status for the millions of undocumented noncitizens already in the U.S., nor does it address the crucial need for comprehensive immigration reform -- reform that addresses the fact that, as long as there is no viable legal alternative, people will continue to enter the U.S. illegally to reunite with family here and to fill jobs that most U.S. citizens eschew.

Though the House has now passed its immigration bill, the Senate is not expected to act on immigration legislation until February 2006. Once the Senate has passed an immigration bill, the House and Senate bills will have to be reconciled by a conference committee.

HR 4437 emerged from the House Judiciary Committee with provisions that would have a detrimental effect on citizens and documented and undocumented noncitizens alike, because it would:

- Make unlawful presence in the U.S. a crime -- a shortcut to authorizing state and local police to enforce federal immigration law.
- Make conviction of unlawful presence in the U.S. an aggravated felony, which could make millions of undocumented immigrants permanently ineligible for any legalization program.
- Expand detention of non-U.S. citizens in removal proceedings.
- Expand the definition of criminal "alien smuggling" in such a way that anyone who assists an undocumented person to live or remain in the U.S. could be charged with a criminal offense.
- Require the expedited removal of noncitizens (except for Mexicans, Canadians, and Cubans) apprehended within 100 miles of the border within 14 days of their arrival in the U.S.
- Gut due process protections and access to judicial review for immigrants.

- Create a phone and Internet-based employment eligibility verification system (EEVS) that not only all employers would be required to use, but also those who recruit or refer individuals for employment, including labor agencies and nonprofit groups.

As passed by the House, the bill includes not only these provisions, but additional draconian ones that were added by amendments adopted when the bill was debated on the House floor. Among the amendments that the House Rules Committee refused to authorize a vote on were one offered by Reps. Jim Kolbe (R-AZ) and Howard Berman (D-CA) that would have incorporated portions of the Secure America and Orderly Immigration Act (HR 2330/S. 1033), including the Essential Worker Visa Program, Adjustment of Status for Undocumented Immigrants, and Family Unity and Backlog Reduction provisions, into HR 4437. The Rules Committee also disallowed provisions denying citizenship to the U.S.-born children of undocumented persons and denying admission to the U.S. to pregnant women who come here to give birth.

The amendments that were adopted on the House floor include provisions that would:

- Dramatically expand passport and document fraud provisions and penalties, expand mandatory detention to apply to more categories of immigrants, broaden the aggravated felony definition, and create new grounds of inadmissibility and deportability.
- Require the construction of a fence along the U.S.-Mexico border.
- Authorize state and local police to enforce federal immigration law.
- Withhold funds from state and local governments deemed to have policies preventing their cooperation with federal immigration law enforcement.
- Enter certain immigration information into the National Crime Information Center database.
- Prohibit the use of Border Patrol uniforms made in Mexico.
- Eliminate the diversity visa program.
- Require that foreign embassies be notified when citizens of the countries they represent have

renounced their allegiance to foreign countries and sworn allegiance to the U.S.

- Delay indefinitely applications for adjustment of status or other immigration benefits if fraud by the applicant is alleged.

Sensenbrenner himself offered an amendment to soften the committee-approved provision that would make unlawful presence in the U.S. a felony for purposes of criminal law and an aggravated felony for purposes of immigration law. His amendment, which was defeated, would have made unlawful presence a misdemeanor.

An early version of Sensenbrenner's manager's amendment contained a "sense of Congress" statement that a necessary part of securing the international land and maritime border of the U.S. entails creation of a secure legal channel by which the foreign workers needed to keep the U.S. economy growing may enter and leave the country. After some Republican representatives objected to this provision, it was eliminated from the final version of the manager's amendment.

On Dec. 15, the White House issued a "Statement of Administration Policy" that urged passage of the bill.

The following is a summary of HR 4437's major provisions:

Title I -- Development of Border Control Strategy

Title I largely deals with development of border control strategy.

Among other things, it would require the secretary of the Dept. of Homeland Security (DHS) to take steps to achieve "operational control" of the entire land and maritime border of the U.S. It would require the secretary to develop a comprehensive plan for the systematic surveillance of the borders and a national strategy for border security. The secretary also would have to report to Congress on the implementation of border security agreements with Mexico and Canada, the "One Face at the Border" initiative (the DHS initiative to institute a unified border inspection process, one that does not separate immigration, customs, and agricultural inspection functions), the impact of the airspace security mission in the National Capital Region, the progress toward tracking the movements and activities of gang members who travel between Central America and the U.S., and the implementation of a radiation detection program at ports of entry.

The bill would require that fingerprint databases maintained by different federal agencies be integrated and that ten fingerprints (rather than just two) be collected for each person whose fingerprints are required. It calls for improvement of two-way communication capabilities among federal, state, and local agencies and residents in remote areas. It also calls for more personnel to staff ports of entry, as well as more human-canine teams for drug and other detection work. Subject to appropriations, the DHS would be required to reimburse property owners for private property damaged by unlawful entry of noncitizens on a U.S. government right-of-way. The DHS secretary also would be required to collect data regarding unauthorized noncitizens who receive medical care after being encountered or taken into custody by the Border Patrol.

This section includes a "sense of Congress" statement that every tool should be used to enforce immigration laws. It also would require that Border Patrol uniforms be made in the U.S. and impose requirements for implementation of the United States Visitor and Immigrant Status Indicator Technology (US-VISIT) program at all land border ports of entry (US-VISIT is the automated system the DHS is developing to keep track of visitors' and immigrants' entries into and departures from the U.S.). It would prohibit the granting of adjustment of status (to permanent residence) or any other immigration relief to a noncitizen applicant until security checks on the applicant are completed and any fraud the applicant is suspected of is fully investigated and found to be unsubstantiated.

Title II -- Combating Alien Smuggling and Illegal Entry and Presence

Title II would expand the definition of "aggravated felony" in the main immigration statute, the Immigration and Nationality Act.

First, the aggravated felony definition would be expanded to include all "smuggling offenses." In making smuggling offenses an aggravated felony, the bill would expand the types of acts that are considered "smuggling" offenses under INA section 274. These would include illegal activities a person engages in with knowledge or in reckless disregard of the fact that another individual is not lawfully allowed to enter, remain, or reside in the U.S. Such "smuggling"-related activities would include harboring, shielding, or transporting an undocumented person, as well as assisting or encouraging such a person to reside in the U.S.

Second, all illegal entry and reentry offenses carrying a

prison sentence of one year or more would be deemed aggravated felonies. Employers who knowingly hired at least 10 workers knowing that they were undocumented would be liable for a fine and imprisonment of not more than 5 years. In addition, the definition of "aggravated felony" would be expanded to include "*soliciting, aiding, abetting, counseling, commanding, inducing, procuring or* an attempt or conspiracy to commit" any of the many offenses described in INA sec. 101(a)(43), the provision that defines "aggravated felony" (HR 4437 would add the italicized words).

The bill also would criminalize certain acts that currently are not considered crimes and would provide that certain offenses carry stiffer criminal sentences. For example, if the bill's provisions were to become law, it not only would be a federal crime to be unlawfully present in the U.S., but that crime would also be considered an aggravated felony for immigration purposes. It also would impose upon individuals who help certain noncitizens to enter the U.S. the same sentences that the noncitizens themselves would receive and would add "smuggling" offenses to the list of crimes that, if committed with a firearm, would result in sentence enhancements.

Whereas now persons who are found to have made false claims of U.S. citizenship are barred from admission to the U.S. and from being granted permanent residence, HR 4437 would expand those bars to persons who make false claims of U.S. nationality. In addition, the bill would place harsh restrictions on the availability of voluntary departure as a form of immigration relief. It would reduce the maximum allowable time for departure from 120 days to 60 days (or 45 days if granted at the conclusion of removal proceedings) and would require that, in exchange for being granted voluntary departure, a person must waive all rights to appeal his or her immigration case. If the person were to later file an appeal, that appeal would invalidate the grant of voluntary departure and the person would be deemed not to have departed the U.S. in a timely fashion. The bill would require that all persons receiving a voluntary departure grant post a bond or demonstrate serious financial hardship. Should the person fail to depart within the granted time, he or she would be subject to a $3,000 fine, would be ineligible for certain forms of relief for 10 years, and would be unable to file a motion to reopen removal proceedings (except in order to apply for withholding of removal or relief under the Convention Against Torture, or CAT). Finally, this bill would prevent any court from extending or granting a stay of the voluntary departure period.

The bill would impose additional rules restricting motions to reopen or reconsider a removal decision and would impose barriers for reopening a case when the DHS wishes to remove a noncitizen to a country that was not considered as a possible "country of removal" during the person's removal proceedings.

This title also would dramatically expand the category of passport and document fraud offenses and reduce the level of intent (by the person charged with such an offense) required for conviction. It would authorize the forfeiture of property by persons convicted of such crimes and its seizure by the government. It would even make omission of a material fact (e.g., when filling out an application for a government document) a basis for criminal charges for falsely making a document. The bill would make no exceptions to these provisions for refugees or victims of violence or duress.

Title II also would expand mandatory detention of noncitizens by creating a statutory presumption requiring mandatory detention if the detained person is undocumented, subject to a final order of removal, or has committed certain felony offenses. As already mentioned, it would expand the definition of "aggravated felony," and it would create new grounds of inadmissibility and deportability.

The bill incorporates portions of the CLEAR Act (HR 3137) by asserting the inherent authority of states and political subdivisions to investigate, identify, apprehend, arrest, and detain or transfer to federal custody non-U.S. citizens encountered in the U.S. It would require that an immigration law training manual and pocket guide be prepared by the DHS for use by state and local law enforcement officers, but that it need not be carried by them; and that DHS make immigration law enforcement training available to local authorities, but that such training not be a prerequisite for exercising this "inherent" authority. The bill would expand the Institutional Removal Program and authorize that noncitizens be kept in detention after they complete criminal sentences. It would require that funds appropriated to reimburse states for incarcerating noncitizens be withheld from any state that has a policy prohibiting law enforcement officers from cooperating with federal immigration law enforcement.

Title III -- Border Security Cooperation and Enforcement

Title III would require the secretaries of Homeland Security and Defense to develop a joint strategic plan to use Dept. of Defense equipment to assist with DHS

surveillance activities at U.S. land and maritime borders. Both would be required to report on the plan to Congress six months after its implementation. The act provides that nothing in it should be construed as altering the prohibition under the Posse Comitatus Act on using the Army or Air Force to enforce civil and criminal laws of the U.S. except as expressly authorized by Congress or the Constitution.

Under this title, the secretaries of DHS and the Interior also would be required to evaluate border security vulnerabilities on land adjacent to the border (land under the jurisdiction of the Dept. of the Interior). Specifically, they would be required to evaluate vulnerability to entry of terrorists, unauthorized noncitizens, and drugs and other contraband. The DHS would be required to then provide appropriate assistance on that land to address such vulnerabilities.

The bill also provides for withholding federal funds under any law enforcement grant programs if any person, agency, or government entity is found to be in violation of section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, which prohibits localities from restricting officials from sending information about the immigration status of an individual to the DHS. The bill also would create a "Red Zone Defense Border Intelligence Pilot Program" along the southwest border.

Title IV -- Detention and Removal

Title IV would require that noncitizens attempting to enter the U.S. illegally be detained until either they are removed from the U.S. or a final decision admitting them has been issued. The only exceptions would be for noncitizens who are permitted to withdraw an application for admission into the U.S. or are paroled into the U.S. "for urgent humanitarian reasons or significant public benefit." The mandatory detention provision would not apply to "any alien who is a native or citizen of a country in the Western Hemisphere with whose government the United States does not have full diplomatic relations" -- namely, to any national of Cuba. This exception for Cubans corresponds to an exception for Cubans from being subject to expedited removal at ports of entry.

To provide detention space for the massive increase in detainees that would result if this provision were to become law, the bill calls for the use of all facilities operated or contracted by the DHS and all possible options to increase detention facilities, including temporary facilities, state and local jails, private spaces, and "secure

alternatives to detention." "Secure alternatives to detention" are not defined.

This title also would authorize the DHS to enter into contracts with private entities to transport noncitizens from the border to detention facilities and other locations.

Title IV would also give the DHS secretary authority, after consultation with the secretary of State, to deny admission to any noncitizen from a country that has not accepted or unreasonably delayed accepting its citizens who have been ordered removed from the U.S. This would apply even to noncitizens who have been granted visas.

The bill also would require the DHS to apply expedited removal to noncitizens from countries other than Mexico and Canada who have not been admitted or paroled into the U.S. and who are apprehended within 100 miles of a land border within 14 days of the time they entered the U.S. Once again, Cubans would be exempted from this provision. This expansion of expedited removal would deny many noncitizens even the limited due process protections that currently exist for people in their situation.

Under this title, the comptroller general would be required to submit a report to Congress on deaths of detainees in immigration custody. The DHS also would be required to report to Congress on apprehensions and deportations.

Finally, the bill would authorize that certain information be added to the National Crime Information Center database, including information on individuals with final orders of removal, voluntary departure agreements, visa overstays, as well as on individuals whose visas have been revoked.

Title V -- Effective Organization of Border Security Agencies

Title V would require the DHS secretary to coordinate border security efforts among agencies within the DHS and to identify and remedy any failure of coordination or integration. It also would establish within the DHS an Office of Air and Marine Operations, whose mission it would be to prevent "the entry of terrorists, other unlawful aliens, instruments of terror, narcotics, and other contraband into the United States" and to help other agencies do the same. The bill also would transfer functions of the Customs Patrol Officers unit of the Tohono O'odham Indian Reservation to the DHS.

Title VI – Terrorist and Criminal Aliens

The bill would bar individuals deportable for engaging in "terrorism" from applying for and receiving withholding of removal. The bar would apply retroactively to all such individuals, whether they are in removal, deportation, or exclusion proceedings.

For individuals under removal orders who cannot be removed to their native country, the bill would create a new category of "dangerous aliens" and would allow the government to detain them indefinitely. This section of the bill is expressly intended to invalidate the Supreme Court's decisions in *Zadvydas v. Davis*, 533 U.S. 678 (2001), and *Clark v. Martinez*, 125 S. Ct. 716 (2005), by allowing the government to indefinitely detain certain noncitizens, in violation of the U.S. Constitution's Due Process Clause.

The bill also would increase criminal penalties and set mandatory minimum sentences for individuals with final removal orders who are convicted of willfully failing to depart the country.

In addition, the bill would create new grounds of inadmissibility for those who are convicted of the following types of offenses: misusing Social Security cards; fraud in connection with ID documents; aggravated felonies; unlawfully procuring citizenship; and domestic violence-related offenses such as stalking, child abuse, neglect or abandonment, or having violated a restraining order. The bill would make persons with such convictions ineligible for a waiver of inadmissibility.

The bill also would create a new deportation ground for those convicted of a single offense of driving while intoxicated or refusing to take a breathalyzer test in violation of state law.

The bill also would make inadmissible and deportable any person who participates in a group that the U.S. attorney general designates as a "criminal street gang." Under the bill, such a person would be ineligible for asylum, withholding of removal, or temporary protected status.

In an attempt to keep criminal noncitizens out of the country, the bill would authorize the DHS to use expedited removal against individuals who are inadmissible to the U.S. based on criminal grounds. It also would bar refugees and asylees who have been convicted of an aggravated felony from becoming lawful permanent residents. Furthermore, the bill would further limit who may qualify

for U.S. citizenship by:

- Amending the definition of "good moral character" to exclude all individuals who are inadmissible based on terrorism or security-related reasons;
- Barring naturalization to those individuals deemed removable based on terrorist or national security grounds;
- Precluding individuals in removal proceedings from naturalizing;
- Preventing judicial review of the DHS's determination that an applicant lacks good moral character;
- Effectively eliminating the right of a naturalization applicant whose case has been pending for over 120 days following his or her interview to seek relief in federal court;
- Allowing the DHS to consider the applicant's entire life history, not merely the relevant statutory period, for good moral character determinations; and
- Barring individuals with aggravated felony convictions from establishing good moral character, even if they were convicted before Nov. 29, 1990.

The bill also would amend the "sexual abuse of a minor" subsection of the "aggravated felony" definition by allowing the age of the victim to be established through either evidence in the conviction record or extrinsic evidence not in the conviction record. The bill also would amend the definition of "conviction" such that any post-conviction relief (e.g., expungement of a conviction) would have no mitigating effect on the negative immigration consequences flowing from the conviction.

Under HR 4437, the federal government would be authorized to reimburse local sheriffs in counties on the southern border who detain, house, and transport noncitizens unlawfully present in the U.S. Those individuals in local custody on immigration violations would be deemed to be in federal custody. This section would, in effect, authorize local sheriffs to enforce federal immigration law.

Under the bill, U.S. attorneys would be required to verify the immigration status of criminal defendants, and federal courts would be required to modify their databases to reflect defendants' unlawful status and other related

information.

The bill also would establish enhanced penalties for crimes of violence or drug trafficking when they are committed by undocumented persons.

Title VII -- Employment Eligibility Verification

Title VII of the bill would make two main changes to the current I-9 employment eligibility verification process. It would create a mandatory employment eligibility verification system (EEVS) that would make use of toll-free telephone lines and other toll-free electronic media through which workers' identities and employment authorization could be verified by the DHS, and that would apply not only to employers but also to those who recruit or refer individuals for employment, including labor service agencies and nonprofit groups. This means that temporary worker agencies, day laborer sites, worker centers, and other similar job placement or referral programs (including job fairs and websites such as *monster.com*) would have to comply with a process similar to the current I-9 process before referring workers to a job. While the original bill would have required union hiring halls also to verify the employment authorization of individuals they refer or dispatch to jobs, certain unions were able to persuade Sensenbrenner to exclude them from this provision through his manager's amendment.

Besides requiring that the government correct and update inaccurate records that would make the EEVS unworkable, HR 4437 includes *no* procedures, funds, or safeguards for ensuring that this requirement is carried out. If workers are unjustly fired due to errors in the EEVS, a provision of the bill would prevent them from filing class action lawsuits against the government or the employer to redress this injustice. Instead, they would be allowed only to file a claim against the government under the Federal Tort Claims Act.

Within two years of the bill's enactment, employers would be required to verify the employment eligibility of new hires via the EEVS. They would also be required to verify the employment eligibility of current employees. In the first two years after this provision's enactment, employers would be allowed to verify current workers' employment authorization on a voluntary basis at any time. Mandatory verification would be required three years from enactment for all employees of federal, state, or local governments, including for all workers at a federal, state, or local government building, military base, nuclear energy site, weapons site, airport, or other critical

infrastructure. Participation in the system for all other employers would be mandatory six years after this provision's enactment.

The bill also would require that the Social Security Administration issue a report within nine months of the bill's enactment regarding the creation of a new Social Security card made of a durable plastic that includes an encrypted and machine-readable electronic identification strip and a digital photograph. All workers would have to obtain this new Social Security card before they could obtain new employment. These cards would be issued to every individual who is authorized to work in the U.S. Employers, referrers, and recruiters would be required to demand that all new hires present the plastic Social Security card when going through the employment eligibility verification process.

In addition, employers, referrers, and recruiters would be required to document on the employment eligibility verification form the person's Social Security number (SSN) if the person claims to have been issued an SSN. If the person is a not a U.S. citizen, the employer, referrer, or recruiter would be required to document the person's alien number, regardless of which documents the person used to establish his or her identity and work authorization. Employers, referrers, and recruiters would be required to retain the form and make it available for inspection to the DHS, the Dept. of Labor, or the Office of Special Counsel for Immigration-Related Unfair Employment Practices.

Another manager's amendment included in the final version of the bill would preempt states and local governments from requiring businesses (such as Home Depot), as a condition of doing business, to provide a shelter for day laborers or do anything that facilitates hiring of day laborers.

Title VIII -- Immigration Litigation Abuse Reduction

Title VIII would further reduce the already limited access to the federal courts available to noncitizens seeking review of their removal orders or challenging the manner in which they have been ordered removed.

The bill would authorize the Board of Immigration Appeals to order immigrants removed. In effect, this would allow the BIA to reverse immigration judge decisions finding immigrants not removable without having to remand the case to the IJ to issue a final order of removal. In addition, no federal court -- district or appellate -- would be able to review the revocation of a

nonimmigrant visa (e.g., a student visa or guest worker visa). This change in law would apply retroactively to make visa revocations that have already occurred nonreviewable.

The bill would expand reinstatement, the process by which a final order of removal is reinstated when the immigrant against whom it was issued reenters the country illegally. Under the bill, reinstatement would not require a hearing before an immigration judge and would apply regardless of the date of the issuance of the final order of removal or the date of illegal reentry. These changes appear to be designed to reverse appellate court decisions that have found that the reinstatement statute does not apply to pre-Apr. 1, 1997, reentries and that a reinstatement order must be issued by an immigration judge. The bill also clarifies that the bar on all forms of discretionary relief imposed by current law on immigrants subject to reinstatement would apply "regardless of when application for such relief was filed." It would severely limit court challenges to the validity of this reformed version of reinstatement and its implementation, as well as to individual reinstatement orders. All these changes would apply retroactively to all reinstatement orders issued on or after Apr. 1, 1997.

In addition, the bill would change the statutory standard that applicants for withholding of removal must meet by requiring immigrants to prove that their life or freedom would be threatened if they were removed from the U.S. and that their race, religion, nationality, membership in a particular social group, or political opinion "would be at least one central reason for such threat." This change would restrict the withholding of removal statute in the same manner as the asylum statute was amended by the REAL ID Act. (For a description of this section of the REAL ID Act, see "REAL ID Act Enacted: Imposes Rigid Driver's License Requirements" IMMIGRANTS' RIGHTS UPDATE, June 30, 2005, p. 2.) The intent of these changes is to negate circuit court precedent under which asylum applicants can establish eligibility for asylum or withholding even when they face persecution based on multiple grounds if removed, so long as one of reasons for the persecution is a protected ground. This change would apply retroactively to all withholding of removal petitions filed on or after May 22, 2005.

The bill also includes a vast court-stripping proposal that would severely restrict immigrants' access to federal courts. If enacted, this section would create a truncated, one-judge screening process for petitions for review of removal orders, in which the judge would have to certify

the case for review within 60 days. Critically, the judge's decision to issue (or not to issue) a certificate would not be reviewable by any other circuit judge or court by *any* process. If the judge failed to make a decision on the certificate of reviewability within this time period, the petition for review would be automatically denied and any stay of removal would be dissolved without further action required by the court or the government.

The court-stripping provisions contained in Title VII are only the latest in a series of such legislative and administrative efforts undertaken in the past decade with regard to immigration claims. Congress passed legislation in 1996 and again in 2005 limiting access to the federal courts for review of many immigration decisions. Currently, immigrants who challenge their removal only have one real chance to get federal court review -- through the federal courts of appeal -- and even this review is often limited in scope. In 2002, former Attorney General John Ashcroft exacerbated the effect of restrictions on judicial review of removal orders by reducing the number of BIA panel members from 23 to 11. He also restricted administrative review of removal orders by instituting a "streamlining process" whereby most appeals filed with the BIA are reviewed by only one BIA member, who often affirms the decision that was appealed without issuing an opinion explaining the affirmance.

The bill also would bar the issuance of nonimmigrant visas unless the noncitizens receiving such visas waive their right to review or appeal any determination of their inadmissibility made at the port of entry or to contest their removal. Under current law only tourists who enter the U.S. under the visa waiver program must make such waivers of their rights. Under this section, a significantly larger number of noncitizens would be forced to waive their basic rights in order to enter the country legally, as nonimmigrant visas cover a wide range of temporary visitors, including students, fiancés/fiancées, and spouses of U.S. citizens entering on K-3 visas.

Title IX -- Prescreening of Air Passengers

Title IX would require that a pilot program be established that would test the use of automated systems for prescreening of passengers on foreign flights.

Title X -- Fencing and Other Border Security Improvements

This title calls for reinforced fencing along certain areas of the U.S.-Mexico border. It also calls for a study assessing the feasibility of building a state-of-the-art

barrier along the U.S.-Canada border.

Title XI -- Security and Fairness Enhancement

Title XI would eliminate the diversity visa program.

Title XII -- Oath of Renunciation and Allegiance

Title XII would codify in law the oath of allegiance. Because the oath is currently contained in the Code of Federal Regulations, it only has regulatory authority supporting it. The bill would invest the oath with the authority of law. Without any regard for the effect on asylees and refugees and their families, this title would also require that foreign embassies be notified when citizens of the country they represent renounce allegiance to that country and swear allegiance to the U.S.

Title XIII -- Elimination of Corruption and Prevention of Acquisition of Immigration Benefits through Fraud

This title provides for an Office of Security and Investigations within U.S. Citizenship and Immigration Services to investigate internal corruption on the part of the agency's employees, as well as immigration benefits fraud. It would require that no adjustment of status or other immigration benefit may be approved unless any suspected fraud relating to the application for the benefit has been fully investigated and found to be unsubstantiated. This provision would leave noncitizens suspected of fraud in limbo, awaiting a ruling of "unsubstantiated." Under this title, an additional $10 fee would be charged to applicants for adjustment of status, extension of status, or an immigrant or nonimmigrant visa, to pay for investigations of internal corruption and benefits fraud.

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ANSWERS TO IMPORTANT QUESTIONS ON COMPREHENSIVE IMMIGRATION REFORM

1) Why don't immigrants come legally in the first place?

Immigrants do want to come legally. But with legal channels so divorced from the demands of our labor market, illegal immigration is inevitable. For example, the Pew Hispanic Center estimates that our economy requires some 485,000 full-time, year-round new immigrant workers each year. But current immigration laws provide just 5,000 visas for such workers annually. No wonder the system is so broken: the market demands almost 500,000 workers a year, and federal law offers 5,000! Meanwhile, our family immigration system is so inflexible that people often wait decades to reunite with loved ones. Because it's a matter of feeding or being with their families, such narrow legal channels lead people to seek entry by whatever means necessary. If we create broader legal channels for these immigrants, most immigration will happen in a safe, legal, and orderly way.

2) Why do you support illegal immigration?

We do not support illegal migration. We support more opportunities for people to come and live here legally. Our country has a demand for workers, and a willing supply from south of the border, but insufficient visas to facilitate their legal entry. We have close family members who face interminable separations because of an outmoded immigration system. We need to fix these mismatches. This, combined with tough enforcement, will go a long way towards solving the problem of illegal immigration.

3) What does "comprehensive immigration reform" mean?

A range of groups have been thinking long and hard about what kind of reform is needed to fix our broken immigration system. Immigration reform must be realistic while staying true to our tradition as a nation of immigrant and a nation of laws. For reform to work it must be comprehensive, this means that any legislative package must include:

1) A workable and effective solution to bring 11 million undocumented immigrants out of the shadows;
2) Broader legal channels so in the future workers can come with a visa and with labor rights;
3) Reduction of the family backlogs so that families can be reunited in a timely fashion;
4) Smart enforcement techniques targeting those who wish us harm; and
5) Integration of immigrants into the civic and social fabric of our communities.

Immigrant rights groups are prepared to support and fight for a proposal that includes these principles, anything less is not reform and cannot be supported.

4) But your plan seems to provide for unlimited immigration. How is that good for our country?

Our solution is not more immigration. It is more legal immigration. Our reforms take a migration flow that is currently happening under the radar screen and funnels it through the legal system. Done right, it doesn't add a single new person to the equation. It replaces the illegal flow with a

legal, orderly flow. It is just regulating what is already happening in a way that benefits both Americans already here and immigrants coming to build new lives. And let there be no doubt, we stand for caps, limits, controls, and screening. The status quo leads to uncontrolled, unlimited, and unscreened immigration. The overhaul we support will make the new limits honest, enforceable, and realistic. Plus, more workers in our economy will be covered by U.S. labor laws.

5) Won't this lead to more illegal immigration?

Not if we get the policy right. If we succeed in replacing the current illegal flow with legal avenues, illegal immigration will be dramatically curtailed. The only employers relying on undocumented labor will be the bad actors, who can be more seriously targeted through enforcement.

But the lynchpin here is linking our reforms to reality. If we require people to return home after working here temporarily, we enact a temporary solution that will certainly lead to future illegal immigration. Employers have long-term labor needs. Some immigrants may want to stay for a few years, but others may want to put down roots and build lives in America. We have to deal with current undocumented workers and future visa holders in a way that provides the option of staying, if they want to and if they are needed in our work force. A temporary worker program is just that—a temporary solution—and it will most definitely lead to undocumented immigration when people overstay their temporary visas or decline to "report for deportation" under the registration program. We need to create a system that's sustainable in the long-run.

6) By legalizing the undocumented, won't we be promoting a huge rush at the border by people who want to come to the U.S.?

People enter the U.S. illegally because they are desperate to work and have no options for legal entry. Our proposal fixes that problem by providing legal channels for migrants to come and fill available jobs without risking their lives. The first step towards this rational system is introducing comprehensive, bipartisan legislation. But if people do come to the U.S. undocumented before this proposal becomes law, they will be required to return home and apply for legal status—if they qualify—through the existing system. They will not be legalized under the legislation.

7) But, Americans don't support this kind of reform, do they?

The American people know that the immigration system is broken and needs reform. They also know that mass deportations of undocumented workers are not realistic. They want a solution that recognizes we are a nation of immigrants and a nation of laws.

In a March 2005 survey of 800 likely voters from around the nation, 75% said that they support our kind of immigration reform: registration of undocumented workers, a regulated flow of future workers and family members, and reasonable rules that are fairly enforced. Support for this reform package was solid across party lines, and didn't waver even when given the alternatives that immigration restrictionists favor.

Support for our version of reform is also strong among Republicans. The conservative Manhattan Institute commissioned a nationwide poll of 800 "likely" Republican voters on October 2005. The poll found that the Republican rank and file strongly favor earned legalization for illegal immigrants.

While there is certainly a faction of people out there who think that if we only did more of what we're doing now we could end undocumented immigration, they are a small but vocal minority. The overwhelming majority of voters crave a real solution that will actually fix the system, and they gravitate toward the package we support.

8) Aren't you basically calling for open immigration/open borders?

The options aren't open borders or closed borders—neither are realistic nor desirable. What we need are *smart* borders. We need to bring the overwhelming majority of well-intentioned immigrants through our legal system so that we can screen them and admit them if they intend to contribute to our nation, or bar them if they intend to harm us. Right now we have a chaotic system in which unauthorized entry is a daily occurrence. By writing realistic immigration laws and enforcing them to the letter, we will finally achieve border control that is good for national security, our families, and our economy.

9) Don't these principles call for "amnesty" for illegals?

No. "Amnesty" means a free pass, an automatic pardon, and a trip to the front of the line. We support a window of opportunity for undocumented immigrants who are contributing to our nation to come forward, pay a serious fine and application fee, go through rigorous criminal background checks and security screenings, demonstrate that they have paid taxes and are learning English, and then obtain a *temporary visa* that could lead to permanent residency, *over time*. They would not be able to jump the line ahead of those who waited for their green cards outside of the U.S.

This approach recognizes the reality that we cannot deport 11 million undocumented workers; that it is better from a security perspective to know is here, and that we will fail to restore the rule of law to our immigration system if we leave millions of undocumented immigrants in the shadows.

10) Doesn't this proposal simply reward illegal behavior?

The broken status quo rewards illegal behavior. Employers who seek out vulnerable workers gain an unfair advantage over law-abiding competitors, smugglers make millions by ferrying workers to jobs across the border, and practically, immigrants seeking to work and hoping to join loved ones in the U.S. can only get in if they enter illegally. By combining a path to legal status for those already here, legal channels for those who otherwise might come illegally, and tough enforcement that makes the new system relatively air-tight, we will replace widespread illegality with a legal, orderly system.

11) Isn't this proposal unfair to those who waited patiently in line?

No. Those currently waiting in line will get permanent residence first. Part of this is due to updating the "family preference" immigration system. Families currently stuck in the interminable family visa backlogs will be able to reunify within a reasonable time frame. Also, immigrants here without papers will come forward and register for temporary admission, but they won't get permanent residency ahead of those who waited in line.

12) Doesn't this proposal send the message that we're not serious about enforcing our laws?

Over the past decade, we have dramatically escalated our enforcement resources, yet illegal immigration has skyrocketed. Enforcement-only approaches have not stopped illegal migration. There are other factors at play here, most notably the laws of supply and demand and the basic need to be with one's family. The first step toward restoring the rule of law is designing an immigration system in synch, not at odds, with this labor market and family reality.

That means tying our visa quotas to U.S. economic needs and family relationships. Once we have a system that is in line with reality, the vast majority of participants (immigrants, family members, and employers) will play by the rules. We will be left with a small minority of bad actors, and enhanced enforcement resources to target them. In fact, this kind of comprehensive reform we are talking about is the only way to achieve effective enforcement of our nation's immigration laws.

13) By letting in more immigrants, aren't we jeopardizing our American values and American way of life?

America is a nation of immigrants. Studies, and experience, show that immigrants embrace America and our values. Within ten years of arrival, more than 75% of immigrants speak English well. Over one third are naturalized citizens, with millions more in the pipeline. Immigrants are Americans by choice; people who want a better future for their families and who believe in the American dream.

14) Won't this proposal lead to more immigrants taking jobs from U.S. workers?

Our proposal helps fill a mismatch between the kinds of jobs created and the kinds of workers available in the U.S. Our society is aging. As baby boomers retire, they require more services. Their kids want to go to college, not work in the fields, factories, or the service sector. And more than half the new jobs being created in our economy require hard work but not formal degrees. This proposal meets U.S. labor needs with a legal flow of workers to available jobs in industries that are attracting fewer and fewer native-born workers.

15) Why can't we just give the 11 million a temporary permit and then require them to go back home?

Undocumented immigrants have planted roots in our communities. They have families, jobs, friends and colleagues in the U.S. They own homes, have U.S. citizen children, belong to churches and work in all kinds of industries. According to the Hispanic Pew Center, up to 70% of the more than 10 million undocumented living in the U.S. have been here more than 5 years. It is unrealistic to expect that they will pack up and leave their families, children, employment and communities behind. Common sense dictates that such requirement would fail.

16) Won't this proposal lead to wage depression for U.S. workers?

In fact, the status quo leads to wage depression, as many industries and regions rely upon undocumented workers. These workers are less likely to assert their rights in the workplace and to join unions, and their bargaining power is limited because of their legal status.

Once well-intentioned employers have access to a stable and legal workforce, hiring of undocumented immigrants will become marginalized and labor laws fully enforced. Temporary workers and newly-legalized immigrants will enjoy all the freedoms of U.S. workers, including the right to change jobs and to join a union. Their bargaining power in the workplace will rise dramatically, lifting the floor for all workers.

Indeed, after immigrants achieved legal status under the Immigration Reform and Control Act of 1986, their real wages rose 14%. Employers benefited, too, as workers learned English and improved jobs skills, which combined to dramatically increase productivity.

17) We tried something like this proposal before, in 1986. Why should we go down this path again?

The problem with the 1986 Immigration Reform and Control Act (IRCA) was that it fell far short of real reform: the enforcement measures were not effective enough, the path to legal status was not complete enough, and the legal channels for future workers and family members were ignored completely. The package we support combines tough enforcement, legal channels for the future flow, and a path to legal status for those here without papers. This combination will turn the status quo that is rife with illegality into a modernized system that is legal and orderly. We should learn from the mistakes made almost twenty years ago.

18) Why does reform need to be comprehensive and bipartisan?

Legislation to fix the broken immigration system has to be comprehensive to work and bipartisan to pass.

"Comprehensive" meaning it has to address the problems with our immigration system holistically—it has to deal with the people who are here illegally now, and provide legal options for workers and families to come in the future. And the proposal cannot be simply a guestworker program with no chance at permanent status. Millions of undocumented immigrants, especially those here for longer than a few years, with family, kids in school, and multiple jobs, simply will not sign up. Such a program also won't address our future labor needs. It is not comprehensive reform.

The legislation also has to be bipartisan, because for any such proposal to pass in the Congress it needs votes from both sides of the aisle. Democrats have been reform-friendly for years, but they control neither chamber of Congress and don't drive the legislative agenda. Republicans do control both chambers and many support these reforms, but they also have to contend with one wing of their party that opposes any reform that is not simply more enforcement. So, reform-minded Republicans and Democrats need each other in order to enact these reforms.

19) Our consulates and USCIS are already overwhelmed with applications. How can they possibly handle a new temporary worker program and a program for millions of people already here?

The one thing the government did right some twenty years ago was set up a parallel structure to administer the program. Community groups helped people make their applications so that the INS wasn't overwhelmed with poorly-prepared files. Of course these reforms will take significant

ramping up at U.S. consulates and within the Department of Homeland Security. But the proposal's fines and fees will cover the costs of such expanded government resources.

It will take years, but it can and must be done. And in the end, our government will see a huge benefit in terms of resource allocation. Right now, our immigration enforcement resources are overextended chasing after undocumented workers and their families. Our reforms will shift much of the work that is currently tying our enforcement agencies in knots to legal admissions channels. Then, border and interior enforcement agents will be able to better focus their resources on real threats and dangers to our country.

20) Shouldn't we get control over our borders first, and then consider something along the lines of your proposal?

We've tried the enforcement-only approach for decades, and what has been the result? People cross in the most remote and dangerous areas of the desert, they rely heavily on criminal smugglers and document forgers, and once inside the United States they are afraid to call the police, take their children for immunizations, or return to their home countries because they might be banished from their lives and jobs in the United States. The undocumented immigrant population has swollen to 10 million people according a recent study by the Pew Hispanic Center. Obviously we need a new approach.

Our proposal combines reform of our admissions laws with modernized enforcement that includes a compliance system with teeth, enhanced capacities for interior enforcement, and best practices applied on the border. Instead of putting the cart before the horse, the cart and the horse must be driven together.

21) But if we had more agents on the border, wouldn't we stop undocumented immigration?

We've tried ramping up resources on the border, and it simply hasn't succeeded. In the last decade or so we tripled the number of border patrol agents and quintupled the enforcement budget. Yet the number of undocumented immigrants living and working in the United States has steadily increased to 10 million. Of course, this growth coincided with record-breaking economic prosperity, and it is well-documented that immigrants were a vital part of that success.

So, an increase in border agents alone is not going to keep immigrants from coming illegally. We have to understand the reasons they come illegally—jobs, opportunities, and family reunification—and provide legal options.

22) Given the tragedy of 9/11, how can you consider legalizing undocumented immigrants?

Rather, the question should be, how can we continue to tolerate the status quo? Ten million people live in the United States without authorization. They rely on the same smugglers and document forgers that terrorists might also exploit. And our enforcement resources are overextended chasing after busboys and gardeners when they should be focusing on real security threats.

We need to bring well-intentioned immigrants through the legal system. When the vast majority of the current illegal flow is happening legally, our enforcement resources will be better trained on the

smugglers and fake document rings, the drug runners and violent criminals, and the terrorists who might manipulate our system.

A path to legal status for the current undocumented population is integral to enhance national security. Once the good people come forward for registration and criminal background checks, the people who cannot and do not will be isolated. Then, our enforcement agents will have a much smaller haystack to sort through than they do now, with so many decent people outside of the legal system.

23) Aren't you worried that terrorists could use this new visa program to enter the U.S.?

When people are admitted legally their identities, photos, and fingerprints are checked against watch lists and criminal databases. Potential security threats can be identified and either apprehended or deterred from entering the U.S. The bigger problem is that so many people enter the U.S. without inspection. Although there is not one shred of evidence that our southern border has been crossed by potential security threats, the possibility exists. A legal, orderly system that funnels workers and family members through proper vetting procedures and legal channels will significantly reduce this vulnerability.

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TALKING POINTS:
LOOKING AHEAD AT THE SENATE DEBATE

(Background/Internal Document Only)
January 2006

As 2006 commences, legislative advocacy on comprehensive immigration reform will focus on the Senate, and particularly, the Senate Judiciary Committee, Chaired by Sen. Arlen Specter (R-PA). Sen. Specter's committee is expected to "mark-up" immigration reform legislation early this year, perhaps as early as February, in anticipation of a bill being considered by the full Senate shortly thereafter. With this in mind, our message strategy needs to evolve slightly to address the state-of-play in the Senate.

Below are some bullets that we hope capture this subtle change in messaging our advocacy and media work across the country.

An enforcement only approach represents more of the same failed, lopsided, and heavy-handed approaches that do nothing to fix the broken immigration system. With the passage of the HR 4437, the House of Representatives made clear that they are more interested in attacking immigrants than tackling the bigger and more complicated problem of fixing an out-of-date immigration system that no longer serves America's needs. Their enforcement-only approach to immigration has done nothing to control illegal immigration and generally make a bad situation worse.

The Senate must take the higher road and deliver serious, workable proposals. In the Senate, there is a much deeper understanding of why a comprehensive approach to fixing all of the various components of our failed immigration policies is necessary. Rather than a shot-gun loaded with a bunch of random anti-immigration pellets – like what the House fired off in December – we expect the Senate to seriously debate legislation that is both sound policy and sound politics, and to do so in a bipartisan fashion.

For reform to work it must be workable and comprehensive. True reform must include the following key elements: 1) deal effectively with undocumented immigrants working and living in the United States; 2) provide for the future flow of workers and close family members; 3) devise tailored, targeted, effective enforcement of more realistic policies; and 4) support the successful integration of newcomers in the communities where they settle. Anything less cannot work and it is not true reform.

Real reform must include elements of the McCain-Kennedy/Secure America bill. The best possible bill out of the Senate will be one that includes key elements of reform (see bullet point above). The McCain-Kennedy bill is the only bill on the table that includes these principles. As the legislative process goes forward, we want the final bill in the Senate to have as much elements of the original McCain-Kennedy bill as possible, ensuring that it is fair, workable, and actually fixes the problems with our immigration system.

Our bottom line: no families, no citizenship, no worker rights = NO deal! To truly fix our broken system we need to bring people out of the shadows and onto a path to legality; we need wider legal channels so workers can come to the U.S. with a visa and with labor rights; and we need to ensure that American families can be reunited with their loved ones in a timely fashion.

Diverse constituencies support our version of comprehensive immigration reform. Business, labor, faith based, immigrant rights organizations and countless others support immigration reform that provides a path to citizenship for the undocumented, protect workers, reunites families, restores the rule of law and promotes citizenship and civic participation. There is a large coalition mobilizing to make their voices heard in the Senate and beyond.

We cannot wait any longer, we need real solutions and we want them now. Our families cannot wait another year or two for reform; too many are already separated by borders or ripped apart by deportations. Our economy cannot wait; the growth of our communities and the dynamism of our economy demands a stable, legal, workforce with labor rights and protections. Our border communities cannot wait; there is already too much death, chaos, and lawlessness. Our children cannot wait; too many are facing unsure futures without a clear path to being on the right side of the law. Our nation cannot wait; we simply must have control over immigration in a post-9/11 world with an immigration system that allows for a safe, legal, and orderly flow of people across our borders on our terms.

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American Immigration Lawyers Association
(AILA)

H.R. 4437
The Border Protection, Antiterrorism, and
Illegal Immigration Control Act of 2005

As Amended and Passed by the House
On 12/16/05

Section-by Section Analisis

American Immigration Lawyers Association

The Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005 (H.R. 4437), as Amended and Passed by the House on 12/16/05 Section-by-Section Analysis

Section 1. Short Title and Table of Contents

The Act may be cited as the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005.

Section 2. Definitions

This section defines the term "State," as it is used in titles I, III, IV and V of the bill, to have the same meaning given that term in section 2(14) of the Homeland Security Act of 2002.

Section 3. Sense of Congress on Setting a Manageable Level of Immigration
Section 3 expresses the sense of Congress that U.S. immigration and naturalization policy "shall be designed to enhance the economic, social and cultural well-being of the United States of America."

TITLE I. SECURING UNITED STATES BORDERS

Section 101: Achieving Operational Control on the Border
Section 101 would, not later than 18 months after the date of enactment of the Act, require the Secretary of Homeland Security to take all actions necessary and appropriate to achieve and maintain operational control over the entire land and maritime border of the United States, using systematic surveillance systems, physical infrastructure enhancements, the hiring and training as expeditiously as possible of the additional Border Patrol agents authorized in the Intelligence Reform and Terrorism Prevention Act of 2004 (Intelligence Reform Act), and increasing the deployment of U.S. Customs and Border Protection (CBP) personnel. Section 101 also would require the Secretary of Homeland Security to report to Congress annually on progress made toward achieving and maintaining operational control over the border.

Section 102: National Strategy for Border Security
Section 102 would require the Secretary of Homeland Security to submit, within six months of the date of enactment, a comprehensive plan for the systematic surveillance of the international land and maritime borders of the United States. In addition, within one year of enactment, the Secretary would be required to submit a National Strategy for Border Security to achieve operational control over the international land and maritime borders of the United States. The Secretary would be required to update the Strategy as needed and forward any such updates to Congress within 30 days of same. Section 102 further provides that, in developing the National Strategy, the Secretary shall consult with state, local and tribal authorities along the border, as well as with appropriate private sector and nongovernmental organizations.

Section 103: Implementation of Cross-Border Security Agreements
Section 103 would require the Secretary of Homeland Security to report on the implementation of the cross-border security agreements with Mexico and Canada. The first report would be required within six months of the bill's enactment, with regular updates required thereafter.

Section 104: Biometric Data Enhancements
This section would require the Secretary of Homeland Security, not later than October 1, 2006, and in consultation with the Attorney General and the Secretary of State, to enhance connectivity between the IDENT and IAFIS fingerprint databases to ensure more expeditious data searches, and collect all fingerprints from each alien required to provide fingerprints during his or her enrollment in the national entry-exit system mandated by section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA).

Section 105: One Face at the Border Initiative
Section 105 would require the Secretary of Homeland Security, not later than October 1, 2007, to submit a report to Congress describing the "tangible and quantifiable benefits" of the One Face at the Border Initiative, and identifying goals for and challenges to the increased effectiveness of the Initiative.

Section 106: Secure Communication
Section 106 would require the Secretary of Homeland Security to develop and implement a plan to ensure clear and secure two-way communication capabilities, including the specific use of satellite communications, between Border Patrol agents in the field, between agents and their respective station offices, between agents and residents of remote areas along the border, and between all Department of Homeland Security (DHS) border security agencies and state, local and tribal law enforcement agencies.

Section 107: Port of Entry Inspection Personnel
This section authorizes the funding to hire 250 additional full-time active duty port of entry inspectors for each of fiscal years (FYs) 2007 through 2010.

Section 108: Canine Detection Teams
Section 108 would require the Secretary of Homeland Security, in each of FYs 2007 through 2011, to increase by at least 25 percent the number of trained detection canines for use at U.S. ports of entry and along the international land and maritime borders of the United States, subject to the availability of appropriations.

Section 109: Secure Border Initiative Financial Accountability
Section 109 would require the DHS Inspector General to review all contract actions related to the new "Secure Border Initiative" with a value greater than $20 million to ensure compliance with cost requirements, performance objectives, and timelines. Upon completion of such review, the Inspector General must report his findings to the Secretary of Homeland Security.

Section 110: Border Patrol Training Capacity Review

Section 110 would require the Comptroller General of the United States to conduct a review of the basic training provided to Border Patrol agents by the DHS to ensure that such training is provided as efficiently and cost-effectively as possible.

Section 111: Airspace Security Mission Impact Review
Section 111 would require the Secretary of Homeland Security to submit a report to Congress within 120 days of the bill's enactment detailing the impact the airspace security mission in the National Capitol Region will have on the DHS's ability to protect the U.S. borders.

Section 112: Repair of Private Infrastructure on Border
This section would authorize an initial appropriation of $50,000 for the Secretary of Homeland security to reimburse property owners for costs associated with repairing damages to the property owners' private infrastructure as a result of illegal immigrant entry. Section 112 also would require the Secretary to submit a report to Congress detailing the expenditures made pursuant to this section.

Section 113: Border Patrol Unit for Virgin Islands
Section 113 would require the establishment of at least one Border Patrol unit for the Virgin Islands by September 30, 2006.

Section 114: Report on Progress in Tracking Travel of Central American Gangs along International Border
Sec. 114 would require the Secretary of Homeland Security, within one year of enactment, to report to Congress on DHS's progress in tracking Central American gangs across the U.S.-Mexican border.

Section 115: Collection of Data
Section 115 would require the Secretary of Homeland Security to compile data annually on the number of unauthorized aliens taken into custody by the Border Patrol who are referred for medical care to local U.S. hospitals or other health facilities, and the number who are then taken into DHS custody after receiving treatment.

Section 116: Deployment of Radiation Detection Portal Equipment at United States Ports of Entry
Section 116 would require the DHS to install radiation monitoring equipment at all ports of entry and authorizes appropriations for same.

Section 117: Consultation with Businesses and Firms
This section would require the Secretary of Homeland Security to conduct outreach with members of the private sector, including business councils, associations, and small, minority-owned, women-owned and disadvantaged businesses, to improve cost-effectiveness, maximize productivity, and identify best practices in connection with the Secure Border Initiative and enhancing border security.

Section 118: Sense of Congress Regarding Enforcement of Immigration Laws[1]

[1] This section was added to the bill on the House floor via an amendment by Rep. Sam Johnson (R-TX).

Section 118 states the sense of Congress that the President, Attorney General, Secretary of State, Secretary of Homeland Security, and other Department Secretaries should immediately use every tool available to them to enforce the immigration laws of the United States.

Section 119: Securing Access to Border Patrol Uniforms[2]
Section 119 would require that all Border Patrol uniforms be manufactured in the United States.

Section 120: US-VISIT[3]
Section 120 would require DHS, within one year of the bill's enactment and in consultation with the heads of other appropriate agencies, to submit to Congress a timeline for equipping all land border ports of entry with the US-VISIT system, developing and deploying the exit component of US-VISIT at all land border ports of entry, and making interoperable all immigration screening systems operated by DHS.

Section 121: Voluntary Relocation Program Extension
Section 121 would extend the authority of agencies to pay the relocation expenses for certain employees.

Section 122: Completion of Background and Security Checks[4]
Section 122 would amend INA § 103 to prohibit the granting of adjustment of status or any other immigration benefit until all relevant security and background checks have been satisfactorily completed.

TITLE II. COMBATTING ALIEN SMUGGLING AND ILLEGAL ENTRY AND PRESENCE

Section 201: Definition of Aggravated Felony
Section 201 would amend INA § 101(a)(43) to expand the definition of "aggravated felony" to include all smuggling offenses, illegal entry and reentry crimes with a sentence of one year or more, and solicitation and assistance in specified offenses.[5] In addition, section 201(a)(4) would put enhancements[6] and divisible statutes[7] back in play and would reverse the burden of proof for

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[2] This section was added to the bill on the House floor via an amendment by Rep. Rick Renzi (R-AZ).
[3] This section was added to the bill on the House floor via an amendment by Rep. Michael Castle (R-DE).
[4] This section was added to the bill on the House floor via an amendment by Rep. Cliff Stearns (R-FL).
[5] This provision affects cases holding that soliciting and aiding and abetting are not aggravated felonies, such as *Martinez-Perez v. Gonzalez*, 417 F.3d 1022 (9th Cir. 2005) (noting that aiding and abetting theft does not constitute an aggravated felony); *Penuliar v. Ashcroft*, 395 F.3d 1037 (9th Cir. 2005) (noting that aiding and abetting theft does not constitute an aggravated felony); *Leyva-Licea v. INS*, 187 F.3d 1147, 1150 (9th Cir. 1999) (conviction for solicitation to possess marijuana not an aggravated felony because solicitation is not punishable under the Controlled Substances Act).
[6] This provision overrules *United States v. Corona-Sanchez*, 291 F.3d 1201 (9th Cir. 2001) (conviction for petty theft not an aggravated felony where two-year sentence imposed was due to application of recidivist sentence enhancement; without such an enhancement, maximum possible sentence for petty theft under California law is six months).
[7] This provision eliminates the courts' long-standing categorical approach to determining whether state-level convictions constitute aggravated felonies. The categorical approach allows the government to establish deportability based only on the conviction record. At the same time, it protects against a second trial in the immigration proceeding about the underlying facts of the crime. Under the categorical approach, if the statute of

the latter.[8] This means that *any* offense in any part of the aggravated felony definition (not just smuggling offenses) could be categorized as an aggravated felony even if the statute under which the person was convicted is divisible and also includes non-aggravated felony conduct.

Section 202: Alien Smuggling and Related Offenses

Section 202 would expand the alien smuggling provisions of INA § 274 to include "offenses" where the "offender" acts with knowledge of, or in reckless disregard of, the fact that the alien lacks lawful permission to enter or remain in the U.S. This incredibly overbroad definition of smuggling would criminalize the work of social service organizations, refugee agencies, churches, attorneys, and other groups that counsel immigrants, treating them the same as smuggling organizations. In addition, family members and employers could be fined and imprisoned for "harboring," "shielding," or "transporting" undocumented family members or employees, filling our prisons with people who have done nothing more than try to reunite their families, or help a worker, friend or client. Section 202 also mandates the seizure and forfeiture of any property, real or personal, that has been used to commit or facilitate the commission of a violation of this section.

Section 203: Improper Entry by, or Presence of, Aliens

Section 203 would amend INA § 275 to create a new federal crime of "unlawful presence." Under current law, presence in the U.S. without valid status is a civil, not a criminal violation. Section 203 defines the term broadly to mean "present in violation of the immigration laws or the regulations prescribed thereunder," essentially rendering every violation, however minor,

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conviction encompasses conduct which does not meet the aggravated felony definition, the conviction will not be deemed an aggravated felony. *See, e.g., United States ex rel. Guarino v. Uhl*, 107 F.2d 399 (2d Cir. 1939) ("the deporting officials may not consider the particular conduct for which the alien has been convicted..."); *United States ex rel. Zaffarano v. Corsi*, 63 F.2d 757, 758-59 (2d Cir. 1933) (where the government alleges that an alien had been convicted of a crime involving moral turpitude, "neither the immigration officials nor the court reviewing their decision may go outside the record of conviction to determine whether in the particular instance the alien's conduct was immoral. And by the record of conviction we mean the charge (indictment), plea, verdict, and sentence."). The Supreme Court endorsed this approach in *Taylor v. United States*, 495 U.S. 575, 602 (1990), in which the Court stated that trial courts, in making sentencing decisions based on prior convictions, should "look only to the fact of conviction and the statutory definition of the prior offense."

[8] It is clearly established that the government must show by clear, unequivocal and convincing evidence that the facts alleged as grounds for deportation are true. *Woodby v. INS*, 385 U.S. 276 (1966). Courts have consistently held this to mean that the government must prove through judicially noticeable evidence that the underlying facts of a conviction met the statutory definition of an aggravated felony. *See, e.g., Huerta-Guevara v. Ashcroft*, 321 F.3d 883 (9th Cir. 2003) (government failed to meet its burden of showing that alien's conviction was a "theft offense" within the meaning of 8 U.S.C. § 1101(a)(43)(G)); *United States v. Harrison*, 2004 U.S. Dist. LEXIS 3621, at *30 (government failed to establish conviction of an aggravated felony where the statute of conviction criminalized conduct that qualified as a drug trafficking offense and conduct that qualified as an offense under the Controlled Substances Act, but also encompassed offenses that did neither). This provision also allows the use of police reports, court records, and presentence reports, which the Supreme Court has prohibited. *Shephard v. United States*, 125 S.Ct. 1254 (2005) (prohibiting use of police reports to determine whether guilty plea defined by a non-generic statute necessarily admitted elements of the generic offense; such inquiry is limited to "the terms of the charging document, the terms of a plea agreement or transcript of colloquy between judge and defendant in which the factual basis for the plea was confirmed by the defendant, or to some comparable judicial record..."); *see also United States ex rel. Zaffarano v. Corsi*, 63 F.2d 757, 758-59 (2d Cir. 1933) (only the record of conviction may be used to determine whether an alien has committed a crime of moral turpitude, "[a]nd by the record of conviction we mean the charge (indictment), plea, verdict, and sentence.").

technical or non-intentional, a federal crime.[9] This section also would expand penalties for aliens who illegally enter or who are present without authorization following convictions for certain crimes, and double the penalties for marriage and immigration-related entrepreneurship fraud.

Section 204: Reentry of Removed Aliens
Section 204 would roll back the various due process safeguards secured through judicial rulings respecting reentry issues and would amend INA § 276 to create mandatory minimum sentences for aliens convicted of reentry after removal.

Section 205: Mandatory Sentencing Ranges for Persons Aiding or Assisting Certain Reentering Aliens
Section 205 would amend INA § 277 to impose upon persons who aid or assist certain aliens to enter the U.S. the same sentences that the aliens themselves would receive.

Section 206: Prohibiting Carrying or Using a Firearm During and in Relation to an Alien Smuggling Crime
Section 206 would add smuggling crimes to the list of crimes for which the use or carrying of a firearm during the commission thereof would result in criminal sentencing enhancements.

Section 207: Clarifying Changes
Section 207 would amend INA § 212(a)(6)(C)(ii) to expand, retroactively, the current provision rendering inadmissible aliens who have made false claims to U.S. citizenship to include aliens who have made false claims to U.S. nationality.[10] Section 207 also would provide that the DHS shall have access to any information kept by any federal agency as to any person seeking a benefit or privilege under the immigration law.

Section 208: Voluntary Departure Reform
Section 208 would amend INA § 240B to make various changes to the Voluntary Departure laws. Specifically, this section would: reduce from 120 to 60 days the maximum period of voluntary departure that can be granted before the conclusion of proceedings; require aliens receiving a grant of voluntary departure before the conclusion of proceedings to post a bond or demonstrate that such requirement would create serious hardship; and require aliens, in exchange for voluntary departure, to waive all rights to any further motion, appeal, application, petition, or petition for review relating to removal or relief or protection from removal. If the alien chooses to take a subsequent appeal, such appeal would invalidate the voluntary departure grant, as

[9] Such violations would include lawful permanent residents who fail to report a change of address to the Department of Homeland Security within ten days (*see* INA 237(a)(3)(A)), as well as university students on an F-1 visa who drop below a full course load (*see* INA 237(a)(1)(C) and implementing regs for F-1 students) or H-1B workers who get laid off and do not find new sponsorship within a small window of opportunity (*see* INA 237(a)(1)(C) and implementing regs for H-1Bs). In conjunction with Section 201 of this bill, such "crimes" could trigger "aggravated felony" liability, subjecting the individual to mandatory detention and virtually no relief from deportation.

[10] This section appears to be designed to overturn case law holding that the analogous criminal statute, 18 U.S.C. § 911 ("[w]hoever falsely and willfully represents himself to be a citizen of the United States shall be fined under this title or imprisoned not more than three years, or both") does not apply to those who claim U.S. nationality, rather than citizenship. *U.S. v. Karaouni*, 379 F.3d 1139, 1140 (9th Cir. 2004) (holding that a noncitizen defendant who had checked the box on Form I-9 attesting to being a "citizen or national of the United States" had not violated § 911 because he might have been claiming to be a national).

would an alien's failure to timely depart. Failure to timely depart would also subject the alien to a $3,000 fine, render him ineligible for various immigration benefits for 10 years after his departure, and preclude a reopening of the removal proceedings except to apply for withholding of removal or protection under the Convention Against Torture. Section 208 would also preclude courts from reinstating, enjoining, delaying, staying, or tolling the period of voluntary departure.[11]

Section 209: Deterring Aliens Ordered Removed from Remaining in the United States Unlawfully and from Unlawfully Returning to the United States after Departing Voluntarily

Section 209 would render individuals ordered removed who fail to depart the U.S. ineligible for any discretionary relief from removal pursuant to a motion to reopen during the time they remain in the U.S. and for a period of 10 years after their departure, with the exception of motions to reopen to seek withholding of removal or protection against torture.

Section 210: Establishment of the Forensic Documents Laboratory[12]

Section 210 would require the Secretary of Homeland Security to establish a Forensic Document Laboratory to collect information on the production, sale, distribution and use of fraudulent documents and to report on the information collected to the relevant federal, state and local agencies and officials.

Section 211: Section 1546 Amendments[13]

Section 211 would amend section 1546(a) of Title 18 U.S.C. (the statue governing the fraud and misuse of visas and other documents) to add distribution of illegal documents to the list of crimes specified in the statute, thereby rendering individuals who distribute illegal documents eligible for the same penalties as those who create, alter, or falsify any immigration-related document.

Section 212: Motions to Reopen or Reconsider[14]

Section 212 would amend INA § 240(c) to provide that the decision to grant or deny a motion to reopen or a motion to reconsider is committed to the Attorney General's discretion. Section 212 further amends INA § 240(c) to effect the time and numerical limits on motions to reopen or reconsider in instances where an alien is to be removed to an alternative country.

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[11] Section 208 would override established case law from several circuits and the BIA, including: *Azarte v. Ashcroft*, 394 F.3d 1278, 1289 (9th Cir. 2005) (holding that "in cases in which a motion to reopen is filed within the voluntary departure period and a stay of removal or voluntary departure is requested, the voluntary departure period is tolled during the period the BIA is considering the motion"); *Sidikhouya v. Gonzales*, 407 F.3d 950 (8th Cir. 2005); *Kanivets v. Gonzales*, 424 F.3d 330 (3d Cir. 2005) (applying *Azarte*'s reasoning to the pre-IIRIRA scheme, and holding that "the *pre-IIRIRA* voluntary departure provision requires that aliens be afforded a reasonable opportunity to receive a ruling on the merits of a timely-filed motion to reopen"); *Barrios v. Attorney General of U.S.*, 399 F.3d 272, 278 (3d Cir. 2005); *In re A-M-*, 23 I. & N. Dec. 737, 743 (BIA 2005) (emphasizing that "recent statutory and regulatory changes have not altered the basic principle...that the timely filing of an appeal with the Board stays the execution of the decision of the Immigration Judge during the pendency of the appeal and tolls the running of the time authorized by the Immigration Judge for voluntary departure"); *Matter of Chouliaris*, 161 I. & N. Dec. 168 (BIA 1977).

[12] This section was added to the bill on the House floor via a Manager's Amendment by Rep. F. James Sensenbrenner (R-WI).

[13] This section was added to the bill on the House floor via an amendment by Rep. Bob Filner (D-CA).

[14] This section was added to the bill on the House floor via the Sensenbrenner Manager's Amendment.

Section 213: Reform of Passport, Visa, and Immigration Fraud Offenses[15]
Section 213 would make a variety of forms of passport, visa, and immigration fraud criminal offenses, making even one instance of such a crime punishable by more than a year in prison and, thus, making them aggravated felonies that would render persons so convicted inadmissible and ineligible for immigration benefits. The section also would make such a crime that victimizes immigrants a criminal offense punishable by imprisonment.

Section 214: Criminal Detention of Aliens[16]
Section 214 would create a rebuttable presumption that an alien must be detained pending trial if the judicial officer finds that there is probable cause to believe that the alien has no lawful status in the U.S.; is the subject of a final order of removal; or has committed certain felony offenses under various sections of Title 18 U.S.C. or under INA §§ 243, 274, 275, 276, 277, or 278.

Section 215: Uniform Statute of Limitations for Certain Immigration, Naturalization, and Peonage Offenses[17]
Section 215 would amend section 3291 of Title 18 U.S.C. to increase and harmonize the statute of limitations for all immigration, naturalization, and peonage offenses to ten years.

Section 216: Conforming Amendment[18]
Section 216 would broaden the definition of "aggravated felony" at INA § 101(a)(43)(P) to include certain passport and other instances of document fraud.

Section 217: Inadmissibility for Passport and Immigration Fraud[19]
Section 217 would amend INA § 212(a)(2)(A)(i) to render inadmissible individuals that have committed an offense under chapter 75 of Title 18 U.S.C., relating to passport and immigration fraud.

Section 218: Removal for Passport and Immigration Fraud[20]
Section 218 would broaden INA § 237(a)(3)(B)(iii) to render deportable individuals who have committed any offense under chapter 75 of Title 18 U.S.C., relating to passport and immigration fraud.

Section 219: Reduction in Immigration Backlog[21]
Section 219 would require the Director of U.S. Citizenship and Immigration Services (USCIS), within six months of the bill's enactment, to "undertake maximum efforts to reduce to the greatest extent practicable the backlog in the processing and adjudicative functions of USCIS." Potential initiatives could include measures such as increasing or transferring personnel to areas with the largest potential for backlog, streamlining paperwork processes, and increasing information technology and service centers.

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[15] Id.
[16] Id.
[17] Id.
[18] Id.
[19] Id.
[20] Id.
[21] This section was added to the bill on the House floor via an amendment by Rep. Nydia Velazquez (D-NY).

Section 220: Federal Affirmation of Assistance in the Immigration Law Enforcement by States and Political Subdivisions of States[22]

Section 220 would "reaffirm the existing inherent authority" of states and localities to investigate, identify, apprehend, arrest, detain, or transfer to federal custody aliens in the U.S. for the purposes of assisting in the enforcement of immigration laws in the course of carrying out routine duties. This section also would provide that nothing in the section may be construed to require law enforcement personnel of a state or locality to report the identity of a victim of, or a witness to, a criminal offense to the Secretary of Homeland Security for immigration enforcement purposes or to arrest such victim or witness for a violation of U.S. immigration laws.

Section 221: Training of State and Local Law Enforcement Personnel Relating to the Enforcement of Immigration Laws[23]

Section 221 would require the Secretary of Homeland Security, within 180 days of the bill's enactment, to establish a training manual for state and local law enforcement personnel to train such personnel in the investigation, identification, apprehension, arrest, detention, and transfer to federal custody of aliens in the U.S., as well as an "immigration enforcement pocket guide" to provide a quick reference on immigration issues during the course of duty. This section also would require the Secretary of Homeland Security to make training for state and local law enforcement personnel on immigration matters available through as many means as possible, but would add the caveat that such training would *not* be a prerequisite to carrying out immigration enforcement responsibilities.

Section 222: Financial Assistance to State and Local Police Agencies that Assist in the Enforcement of Immigration Laws[24]

Section 222 would authorize $250 million per fiscal year from which funds the Secretary of Homeland Security could issue grants to states and localities for procuring equipment, technology, facilities, and other products that facilitate and are directly related to investigating, apprehending, arresting, detaining, or transporting immigration law violators. To receive such a grant, states and localities must have the authority to, and have in effect the policy and practice to, assist in the enforcement of the immigration laws during the course of carrying out their routine law enforcement duties.

Section 223: Institutional Review Program[25]

Section 223 would require the DHS to continue to operate, implement, and expand to all states the Institutional Review Program (IRP), which identifies removable criminal aliens in federal and state correctional facilities. Section 223 also would require any state that receives federal funds for the incarceration of criminal aliens to cooperate with officials of the IRP, expeditiously and systematically identify criminal aliens in its prison and jail populations, and promptly convey such information to officials of the program.

Section 224: State Criminal Alien Assistance Program (SCAAP)[26]

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[22] This section was added to the bill on the House floor via an amendment by Rep. Charlie Norwood (R-GA).
[23] Id.
[24] Id.
[25] Id.

Section 224 would amend INA § 241(i)(5) to authorize $1 billion in funding per fiscal year for the State Criminal Alien Assistance Program (SCAAP) for fiscal years 2005 onward.

Section 225: State Authorization for Assistance in the Enforcement of Immigration Laws Encouraged[27]

Section 225 would bar from the receipt of SCAAP funding states and localities that have in place policies prohibiting local law enforcement officials from assisting or cooperating with federal immigration law enforcement personnel.

TITLE III. BORDER SECURITY COOPERATION AND ENFORCEMENT

Section 301: Joint Strategic Plan for United States Border Surveillance and Support

Section 301 would require the Secretary of Homeland Security and Secretary of Defense to develop a joint strategic plan to increase the availability of Department of Defense surveillance equipment to assist with DHS surveillance activities conducted at or near the international land and maritime borders of the United States. In addition, this section would require the Secretaries to report to Congress within six months describing how the Department of Defense will assist with border security surveillance operations. Finally, section 301 states that nothing in this section will amend or alter the prohibition on the use of the Army or the Air Force as a posse comitatus under section 1385 of title 18 U.S.C.

Section 302: Border Security on Protected Land

Section 302 would require the Secretary of Homeland Security, in consultation with the Secretary of Interior, to evaluate border security vulnerabilities on land directly adjacent to the international land border of the U.S. under the jurisdiction of the Department of Interior related to the prevention of the entry of terrorists, other unlawful aliens, narcotics and other contraband. The Secretary of Homeland Security would be required to provide additional border security assistance as necessary based upon this evaluation.

Section 303: Border Security Threat Assessment and Information Sharing Test and Evaluation Exercise

This section requires the Secretary of Homeland Security to design and carry out a national border security exercise for the purposes of involving officials from federal, state, territorial, local, tribal, and international governments and representatives from the private sector; testing and evaluating the capacity of the United States to anticipate, detect, and disrupt threats to the integrity of U.S. borders; and testing and evaluating the information sharing capability among federal, state, territorial, local, tribal, and international governments.

Section 304: Border Security Advisory Committee

Section 304 would establish a Border Security Advisory Committee to advise the Secretary of Homeland Security on issues relating to border protection and enforcement.

Section 305: Permitted Use of Homeland Security Grant Funds for Border Security Activities

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[26] Id.
[27] Id.

Section 305 would permit the Secretary of Homeland Security to allow recipients of certain covered grants to use those funds to cover the costs of enforcing federal laws aimed at preventing or responding to the unlawful entry of aliens into the U.S. if such activities are carried out under agreement with a federal agency.

Section 306: Center of Excellence for Border Security
Section 306 would require the Secretary of Homeland Security to establish a university-based Center of Excellence for Border Security, the activities of which would include conducting research, examining existing and emerging border security technology and systems, and providing education, technical, and analytical assistance for the Department of Homeland Security to effectively secure the borders.

Section 307: Sense of Congress Regarding Cooperation with Indian Nations
Section 307 expresses the sense of Congress that the Department of Homeland Security should strive to include as part of a National Strategy for Border Security recommendations on how to enhance DHS cooperation with sovereign Indian Nations on securing the borders and preventing terrorist entry.

Section 308: Communication Between Government Agencies and the Department of Homeland Security[28]
Section 308 would amend IIRIRA § 642 to prohibit the Attorney General from providing certain grant funding to any federal, state, or local agency or entity that is in violation of that section. (Section 642 bars federal, state, and local government entities or officials from prohibiting or in any way restricting any government official or entity from sending to, or receiving from, the DHS information regarding the citizenship or immigration status of any individual.)

Section 309: Red Zone Defense Border Intelligence Pilot Program[29]
This section would require the Secretary of Homeland Security and the Director of National Intelligence to jointly establish a pilot program to improve the coordination and management of intelligence and homeland security information provided to or utilized by the DHS relating to the southwest international land and maritime border of the U.S.

TITLE IV. DETENTION AND REMOVAL

Section 401: Mandatory Detention for Aliens Apprehended at or Between Ports of Entry
Section 401 would require the Department of Homeland Security (DHS), by October 1, 2006, to detain all aliens apprehended at ports of entry or along the international land and maritime borders of the U.S. until they are removed from the U.S. or a final decision granting their admission has been determined. The only exceptions to mandatory detention are reserved for aliens who depart immediately, such as Mexican nationals who are voluntarily returned across the border, and those paroled in on the basis of urgent humanitarian reasons or significant public benefit. Section 401 also sets up an interim scheme which would begin 60 days after enactment. Under the interim regime, a person attempting to enter the U.S. illegally and apprehended at a U.S. port of entry or along a land or maritime border could not be released pending proceedings

[28] This section was added to the bill on the House floor via an amendment by Rep. John Campbell (R-CA).
[29] This section was added to the bill on the House floor via the Sensenbrenner Manager's Amendment.

unless the DHS Secretary determines that the alien does not pose a national security risk and the alien posts bond of at least $5,000. The provision makes an exception for Cubans.

Section 402: Expansion and Effective Management of Detention Facilities
Section 402 would require DHS to utilize fully all available detention facilities and all possible options to cost effectively increase detention capacity, including temporary facilities, contracting with state and local jails, and secure alternatives to detention.

Section 403: Enhancing Transportation Capacity for Unlawful Aliens
This section would authorize the DHS Secretary to enter into contracts with private entities to provide secure domestic transportation of aliens apprehended at or between ports of entry from the custody of the Border Patrol to a detention facility and other locations as necessary.

Section 404: Denial of Admission to Nationals of Country Denying or Delaying Accepting Alien
Section 404 would amend INA § 243(d) to authorize the DHS Secretary, after consultation with the Secretary of State, to deny admission to any citizen, subject, national, or resident of any country that has denied or unreasonably delayed accepting the return of an alien ordered removed from the U.S. This section of the INA currently allows the State Department (DOS) to discontinue granting visas to individuals from such countries upon notification by the Attorney General of the delay or denial. Because the proposed amendment would not require the DOS to cease issuing visas to individuals of the countries in question, such persons could find themselves at our borders with proper visas and have their entry subsequently denied by DHS officials. In addition, no exception is made for asylum applicants, creating the potential for individuals to be sent back to countries in which their lives could be in danger.

Section 405: Report on Financial Burden of Repatriation
Section 405 would require the DHS Secretary to submit an annual report to the Secretary of State and Congress detailing the costs to DHS of repatriating aliens, and providing recommendations for more a cost effective repatriation program.

Section 406: Training Program
This section would require the DHS Secretary to review and evaluate the training provided to Border Patrol Agents and port of entry inspectors to ensure consistency in their referrals to an asylum officer for credible fear determinations.

Section 407: Expedited Removal
Section 407 would expand the expedited removal provisions of INA § 235(b)(1)(A)(iii) to aliens other than Mexicans or Canadians who have not been admitted or paroled into the U.S. and who are apprehended within 100 miles of an international land border and within 14 days of entry. This section would also broaden the "Cuban exception" (which currently excepts from expedited removal Cubans arriving by air at a port of entry) to any Cuban present in the U.S. regardless of place or manner of arrival. Section 407 includes no other exceptions to the expedited removal

policy, thus raising the likelihood that more and more individuals would be wrongly subjected to this policy without recourse to relief.[30]

Section 408: GAO Study on Deaths in Custody
Section 408 would require the Comptroller General of the United States to submit a report to Congress within six months of the bill's enactment on the deaths in custody of detainees held on immigration violations by the Secretary of Homeland Security.

Section 409: Report on Apprehension and Detention of Certain Aliens[31]
Section 409 would require the Secretary of Homeland Security to report to Congress on the number of undocumented aliens from noncontiguous countries who are apprehended at or between ports of entry; the number of such aliens who have been deported since the date of enactment; and the number of such aliens from countries identified as sponsors of terrorism. In addition, section 409 expresses the sense of Congress that the Secretary of Homeland Security should develop a strategy for entering into appropriate security screening watch lists the appropriate background information of undocumented aliens from countries sponsoring terrorism.

Section 410: Listing of Immigration Violators in the National Crime Information Center Database[32]
Section 410 would require the entry into the Department of Justice's (DOJ's) National Crime Information Center (NCIC) database information on all aliens against whom a final order of removal has been issued, all aliens who have signed a voluntary departure agreement, all aliens who have overstayed their authorized period of stay, and all aliens whose visas have been revoked. The information would have to be provided to the NCIC within 180 days of the bill's passage.

TITLE V. EFFECTIVE ORGANIZATION OF BORDER SECURITY AGENCIES

Section 501: Enhanced Border Security Coordination and Management
Section 501 would require the Secretary of Homeland Security to ensure full coordination of border security efforts among the various DHS agencies and identify and remedy any failure of coordination or integration in a prompt and efficient manner.

Section 502: Office of Air and Marine Operations
Section 502 would amend the Homeland Security Act to establish an Office of Air and Marine Operations (OAMO) within DHS, the primary mission of which would be to prevent the entry into the U.S. of terrorists and other unlawful aliens, instruments of terrorism, narcotics, and other contraband.

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[30] The Section's broad grant of unreviewable authority to remove persons within U.S. territory runs contrary to the Constitution's guarantee of due process, as repeatedly articulated by the Supreme Court: "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). "[A]liens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law." *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953).
[31] This section was added to the bill on the House floor via an amendment by Rep. Michael Castle (R-DE).
[32] This section was added to the bill on the House floor via an amendment by Rep. Charlie Norwood (R-GA).

Section 503: Shadow Wolves Transfer
Section 503 would require the Secretary of Homeland Security to transfer to U.S. Immigration and Customs Enforcement (ICE) all functions of the Customs Patrol Officers unit operating on the Tohono O'odham Indian reservation (commonly known as the "Shadow Wolves" unit).

TITLE VI. TERRORISTS AND CRIMINAL ALIENS

Section 601: Removal of Terrorist Aliens
Section 601 would render ineligible for withholding of removal aliens who are deportable under the broad definition of "terrorism," including "any alien who the Secretary of State, after consultation with the Attorney General [or vice versa], determines has been associated with a terrorist organization and intends while in the United States to engage solely, principally, or incidentally in activities that could endanger the welfare, safety, or security of the United States." Section 601 would also expand the bars to asylum to include all of 212(a)(3)(B)(i) and (212)(a)(3)(F), thus making the asylum bar coextensive with the withholding bar. These changes would apply retroactively to all aliens in removal, deportation, or exclusion proceedings and to all applications pending on or filed after the date of enactment of this legislation.

Section 602: Detention of Dangerous Aliens
Section 602 would amend INA § 241 to create a new "dangerous aliens" detention ground permitting indefinite detention for aliens who cannot be removed. Review of the new detention provisions would be limited to the U.S. District Court for the District of D.C. [33]

Section 603: Increase in Criminal Penalties
Section 603 would amend INA § 243 to increase penalties and set mandatory minimum sentences for aliens who fail to depart when ordered removed, who obstruct their removal, or who fail to comply with the terms of release pending removal.

Section 604: Precluding Admissibility of Aggravated Felons and Other Criminals
Section 604 would amend INA § 212(a) to render inadmissible aliens: who have been convicted of offenses related to the misuse of Social Security numbers and cards, or fraud in connection with identification documents; who at any time have been convicted of an aggravated felony; who have procured citizenship unlawfully; who have been convicted of a crime of domestic violence, stalking, child abuse, child neglect, or child abandonment; or who have violated a protective order. It also would bar such aliens from seeking a waiver of inadmissibility.

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[33] This provision seeks to invalidate Supreme Court precedents *Zadvydas v. Davis*, 533 U.S. 678 (2001) and *Clark v. Martinez*, 125 S.Ct. 716 (2005), by allowing for indefinite and potentially permanent detention. *Zadvydas* and *Clark* hold that, where removal of a noncitizen is "a remote possibility at best," *Zadvydas* at 690, indefinite civil detention under the INA is an unconstitutional infringement of basic liberty principles built into the Constitution. By limiting extensions of the 90-day statutory removal period to six months, *Zadvydas* holds that indefinite, potentially permanent civil detention is unconstitutional because "the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent," *Zadvydas* at 693. *Clark* interpreted the *Zadvydas* rule to apply to inadmissible noncitizens who cannot be removed, holding that any distinction between the classes of immigrants "cannot justify giving the same detention provision a different meaning," *Clark* at 724.

Section 605: Precluding Refugee or Asylee Adjustment of Status for Aggravated Felonies
Section 605 would amend INA § 209(c) to bar asylees and refugees convicted of an aggravated felony from adjustment of status. The amendments made by section 605 would be retroactive.

Section 606: Removing Drunk Drivers[34]
Section 606 would require the DHS to take into custody any alien who is unlawfully present, who is deportable on any grounds, and who is apprehended for driving while intoxicated, driving under the influence or similar violation of state law, or for refusing to submit to a Breathalyzer (or similar) test to determine blood alcohol content if the state or local officer who apprehends the alien is covered by an agreement under INA § 287(g). In addition, this section would require state and local law enforcement officers who apprehend for a drunk driving offense an individual whom they have reasonable grounds to believe is an alien to check the various federal databases to verify whether the person is an alien, and whether he is unlawfully present in the U.S. If the check indicates that the individual is unlawfully present, the law enforcement official (assuming he or she is covered by a § 287(g) agreement) would be authorized to issue a federal detainer to maintain the alien in custody until the alien is convicted or transported to federal custody, and the Secretary of Homeland Security would be required to reimburse the state or locality for such transportation costs. If the database check indicates that the alien is lawfully present, the officer would be required to take the alien into custody, notify the Secretary of Homeland Security of the arrest, and detain the alien until the Secretary determines what action he wishes to take against the alien.

Section 606 also would amend INA § 237(a)(2) to render deportable aliens who are unlawfully present and who are convicted of driving while intoxicated, driving under the influence, or similar violation of state law or who refuse to take a breathalyzer or other test. Finally, section 606 would require state motor vehicle administrators to share with the Secretary of Homeland Security information about aliens' convictions under this section (or their refusals to submit to a breathalyzer test). Such information would also be required to be shared with other states, and promptly entered into the NCIC database.[35]

Section 607: Designated County Law Enforcement Assistance Program
This section would authorize and reimburse local sheriffs in "designated counties" (defined as "a county any part of which is within 25 miles of the southern border of the United States") to enforce state and federal laws in their counties, including the immigration laws if authorized under a written agreement pursuant to INA § 287(g), and to transfer aliens to federal custody. Section 607 also would reimburse those Sheriffs for costs associated with detaining, housing and transporting undocumented aliens whom they arrest.

Section 608: Rendering Inadmissible and Deportable Aliens Participating in Criminal Street Gangs; Detention; Ineligibility from Protection from Removal and Asylum
Section 608 would render inadmissible and deportable aliens participating in "criminal street gangs" (as defined under this section). Section 608 also would render such individuals ineligible

[34] This section was amended on the House floor via an amendment by Rep. Sue Myrick (R-NC).
[35] Section 606 is an attempt to circumvent *Leocal v. Ashcroft*, 543 U.S. 1 (2004), which recognized that driving under the influence convictions which either do not have a *mens rea* component or require only a showing of negligence in the operation of a vehicle are not "aggravated felonies."

for asylum, withholding of removal, and temporary protected status, and would subject them to mandatory detention. In addition, section 609 would adopt procedures similar to those used by the State Department to designate foreign terrorist organizations under INA § 219, to enable the Attorney General to designate criminal street gangs for purposes of the immigration laws.

Section 609: Naturalization Reform

Section 609 would amend INA § 316 to bar the naturalization of anyone the Secretary of Homeland Security determines, in the Secretary's discretion, to have been at any time an alien described in the INA's terrorism-related inadmissibility and removability provisions. The Secretary's determination could be based upon "any relevant information or evidence, including classified, sensitive, or national security information," and "shall be binding upon, and unreviewable by, any court exercising jurisdiction under the immigration laws over any application for naturalization." In addition, section 609 would prevent aliens in removal proceedings from naturalizing while those proceedings are pending, and require that conditional permanent residents have the conditions on their residence removed before they can be naturalized. As to the latter point, there are currently many EB-5 conditional permanent residents whose applications to remove the conditions on their residency have been pending for years due to agency disorganization, who are arguably eligible to naturalize under current law. Section 609 of the bill would preclude that. Section 609 would also gut the right to apply to the district court in the face of naturalization adjudication delays. INA § 336(b) currently provides that if the naturalization interview has occurred, and 120 days have passed without a decision (for whatever reason), the applicant may apply to the U.S. district court for a hearing on the matter. The court can choose to adjudicate the application, or remand the matter to the DHS for further action.[36]

Section 609 would effectively eliminate this ability to get a decision in delayed citizenship cases. While it appears to just shift the wait time from 120 to 180 days, in reality the clock would never start, as section 609 also allows the DHS to define by regulation an "interview" or "examination" to be continuing until a final decision. This is a tactic DHS tried successfully in a court in Virginia recently, but other courts have rejected this as vitiating the 120-day rule completely. Moreover, under section 609 the only power the court would have would be to remand the case to DHS; the bill thus strips the court of the ability to grant the application after reviewing the record. As noted above, current law gives the court the option to remand the case to the agency for further action, where appropriate, e.g., if the court wanted more background check information completed.[37]

Finally, section 609 would provide that "No court shall have jurisdiction to determine, or to review a determination of the Secretary made at any time regarding, for purposes of an application for naturalization, whether an alien is a person of good moral character..." Recent

[36] Historical note: Prior to 1990, the statute provided that the courts would decide naturalization applications after the applicant applied to INS for a recommendation on his or her citizenship application. In IMMACT 90, Congress decided to make it a more administrative process, and shifted to INS the power to decide the application as an initial matter, but preserved a role for the courts if INS did not do so within 120 days of the interview.

[37] *See, e.g., United States v. Hovsepian,* 359 F.2d 1144, 1160 (9th Cir. 2003) ("Congress intended to vest power to decide languishing naturalization applications in the district court *alone, unless* the court chooses to 'remand the matter' to the INS, with the *court's* instructions").

litigation demonstrates that the DHS often gets good moral character decisions wrong. Absent judicial review, the agency will be able to continue this erroneous process unfettered.[38]

Section 610: Expedited Removal for Aliens Inadmissible on Criminal or Security Grounds
Section 610 would authorize the Secretary of Homeland Security to use expedited removal proceedings to determine inadmissibility under INA § 212(a)(2) and issue an order of removal with respect to an alien who has not been admitted or paroled, has not been found to have a credible fear of persecution pursuant to the procedures set forth in § 235, and is not eligible for a waiver of inadmissibility or relief from removal. In addition, section 610 would cut from 14 to 7 days the prohibition on executing such a removal order designed to allow the alien an opportunity to seek judicial review.

Section 611: Technical Correction for Effective Date in Change in Inadmissibility for Terrorists Under REAL ID Act
Section 611 purports to "clarify" that the amendments made in the terrorist grounds of removal in the REAL ID Act are to be applied to aliens in all removal, deportation, and exclusion cases, regardless of when those cases were initiated.

Section 612: Bar to Good Moral Character
Section 612 would amend the definition of "good moral character" at INA § 101(f) to preclude from a finding of good moral character anyone described in the terrorism- or security-related grounds of INA §§ 212 and 237. Section 612 also would allow an aggravated felony conviction to bar a person from a finding of good moral character even if the crime was not classified as an aggravated felony at the time of conviction. In addition, section 612 would allow the DHS and the Attorney General to base a discretionary finding that a person is not of good moral character on conduct by the applicant that took place outside the statutory period for which good moral character must be established, effectively increasing the good moral character eligibility requirement from five years to a lifetime.[39] Finally, section 612 would bar naturalization for all applicants convicted of "aggravated felonies" (a term of art that is more misleading than instructive, as it can include misdemeanors, and many crimes that most people would not consider "aggravated") where the conviction was prior to November 29, 1990 (the effective date of the Immigration Act of 1990). Current law and regulations provide that there is no bar to

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[38] By strictly limiting the circumstances in which a noncitizen can appeal a denial of naturalization, Section 609 defeats the policy objectives behind the Immigration Act of 1990, namely to increase "the consistency and fairness of naturalization decisions," and "to give naturalization applicants the power to choose which forum would adjudicate their applications," *Hovsepian* at 1163-64. Finally, section 609(f) alters the burden of proof in court cases challenging denials of naturalization, thereby undermining the role of the courts in determining citizenship.

[39] This provision appears to be an attempt to overturn a recent en banc 9th Cir decision in *Hovsepian*, 422 F.3d 883 (9th Cir 2005), which held that since citizenship required good moral character for only the past five years, if the applicant showed he met that requirement, the DHS could not deny based on an offense prior to the five-year period. As the *Hovsepian* court stated, "To hold otherwise would sanction a denial of citizenship where the applicant's misconduct...was many years in the past, and where a former bad record has been followed by many years of exemplary conduct with every evidence of reformation and subsequent good moral character. Such a conclusion would require a holding that Congress had enacted a legislative doctrine of predestination and eternal damnation, whereas the statutes contemplate rehabilitation." *See also Repouille v. U.S.*, 165 F.2d 152, 153 (2d Cir. 1947), and *Klig v. U.S.*, 296 F.2d 533, 535 (2d Cir. 1961) (holding that GMC determinations in naturalization applications "are made on a case by case basis in accordance with the 'generally accepted moral conventions *current at the time*'").

naturalization where the conviction occurred before that date, assuming that the applicant can show the five-year good moral character requirement.[40]

Section 613: Strengthening Definitions of "Aggravated Felony" and "Conviction"
Section 613 would amend INA §101(a)(43)(A) to state that sexual abuse of a minor is an aggravated felony for immigration purposes "whether or not the minority of the victim is established by evidence contained in the record of conviction or by evidence extrinsic to the record of conviction." In addition, and more noteworthy, section 613 would provide that "any reversal, vacatur, expungement, or modification to a conviction (or of a sentence or conviction record) that was granted to ameliorate the consequences of the conviction, or was granted for rehabilitative purposes, or for failure to advise the alien of the immigration consequences of the guilty plea" will have no effect on the immigration consequences resulting from the original conviction. Moreover, the alien would have the burden of demonstrating that the reversal, vacatur, expungement, or modification was not so granted. This change would be made retroactive.[41]

Section 614: Deportability for Criminal Offenses
Section 614 would render removable aliens who have procured citizenship unlawfully (or attempted to do so) as well as aliens convicted of offenses relating to the misuse of social security numbers and cards or fraud in connection with identification documents. Once again, this section would be made retroactive.

Section 615: Declaration of Congress[42]
Section 615 would declare Congress's condemnation of rapes by smugglers along the international land border of the U.S. and would urge in the strongest possible terms the government of Mexico to work in coordination with the DHS to take immediate action to prevent such rapes from occurring.

Section 616: Report on Criminal Alien Prosecution[43]
Section 616 would require the Attorney General to report annually on the status of criminal alien prosecutions, including prosecutions of human smugglers.

Section 617: Determination of Immigration Status of Individuals Charged with Federal Offenses[44]

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[40] This provision also alters Congress's judgment in 1990 not to make new bars to citizenship retroactive and instead reaches back to pre-1990 conduct to bar citizenship fifteen years later, without any rationale that could meet due process standards.

[41] Section 613 ignores violations of the requirement that a plea be knowing and voluntary and permits immigration proceedings to proceed on the basis of constitutionally suspect pleas. In addition, it reverses standards established by the BIA and the courts. *See, e.g. In re Cota-Vargas*, 23 I. & N. Dec. 849 (BIA 2005) (not looking behind court's decision to reduce a sentence); *In re Pickering*, 23 I & N 621 (2003)(finding a conviction despite vacatur that was solely for immigration purposes); *Matter of Rodriguez-Ruiz*, 22 I & N 1378 (BIA 2000)(conviction that had been vacated on the merits pursuant to Article 440 of the New York Criminal Procedure Law did not constitute a conviction for immigration purposes within the meaning of the statute); *Lujan-Amendariz v. INS*, 222 F.3d 728 (9th Cir. 2000) (holding that conviction expunged under the Federal First Offender Act does not serve as a conviction under INA 101(48)).

[42] This section was added to the bill on the House floor via an amendment by Rep. Ginny Brown-Waite (R-FL).

[43] This section was added to the bill on the House floor via the Sensenbrenner Manager's Amendment.

[44] Id.

Section 617 would require that, beginning two years after the date of the bill's enactment, the office of the United States Attorney that is prosecuting a criminal case in federal court must determine, within 30 days of filing the initial case pleadings, whether the defendant(s) in the case is lawfully present in the U.S., and must report the results of such determination to the court.

Section 618: Increased Criminal Penalties for Document Fraud and Crimes of Violence[45]
Section 618(a) would increase the criminal penalties for various types of document fraud offenses. Section 618(b) would enhance the penalties for aliens who are unlawfully present in the U.S. and who are convicted of crimes of violence or drug trafficking offenses. This section also would enhance the penalty for an alien who was previously ordered removed and commits a crime of violence or a drug trafficking offense.

Section 619: Laundering of Monetary Instruments[46]
Section 619 would add human trafficking and human smuggling to the list of predicate acts under the federal money laundering statute.

TITLE VII. EMPLOYMENT ELIGIBILITY VERIFICATION

Section 701: Employment Eligibility Verification System
Section 701 and the entire title would make major revisions to the employment eligibility verification regime contained in Section 274A of the INA. This section seeks to amend §274A(b) by requiring the Secretary of Homeland Security to create a system for telephonic or electronic verification of an individual's employment authorization. It would require the system to provide verification or tentative non-verification of an individual's identity and employment eligibility within 3 days of the inquiry and, in the case of tentative non-verification, a secondary process for final verification or non-verification within 10 days. The Commissioner of Social Security and the Secretary of Homeland Security would be responsible for developing a process for comparing the names against the respective databases to ensure timely and accurate responses to employer inquiries. When a single social security account number has been submitted in a way that suggests potential fraudulent use of the number, the Secretary of Homeland Security would be obligated to investigate.

This provision states that the information contained in this database cannot be used by the government for any purpose other than as provided for in this section and it states that this section does not authorize issuance of a national identity card. This section would prohibit class actions challenging problems with the verification mechanism and would limit claims for relief to the mechanism established in the Federal Tort Claims Act. It also would immunize from liability anyone who takes action in good faith reliance on information provided through this system.

This section would repeal §274A(d) relating to evaluation of and changes to the current employment verification system.

Section 702: Employment Eligibility Verification Process

[45] This section was added to the bill on the House floor via an amendment by Rep. John Shadegg (R-AZ).
[46] Id.

Section 702 sets out the steps that an employer would have to undertake to be eligible for a good faith affirmative defense to liability for hiring or employment of unauthorized workers. It would obligate employers to seek verification under the new system within 3 working days of new hires or pursuant to the schedule set forth elsewhere in this title for previous hires. It also would create some limited exceptions to these requirements for failures of the verification system.

This section would revise the attestation process that employers and employees (both citizens and noncitizens) must follow in connection with verifying employment authorization. It would maintain the requirement that employers examine the individual's authorizing documentation (e.g., U.S passport or other authorizing documents prescribed by the Secretary of Homeland Security). It also would amend the retention of verification forms requirements to conform to the new verification system procedures while keeping the same basic timeframes intact (three years after the date of hiring or one year after date of termination).

In the event of a tentative non-verification, the individual for whom verification is sought would have to seek secondary verification pursuant to the process established in Section 701 (above). If the individual chooses not to contest the tentative non-verification within the time period allowed, the non-verification would become final. An employer would not be permitted to terminate an individual (for reasons relating to non-confirmation of identity and employment authorization) until a tentative non-verification becomes final.

Section 703: Expansion of Employment Eligibility Verification System to Previously Hired Individuals and Recruiting and Referring

This section would establish requirements for employers to verify the identity and employment eligibility of previously hired employees. Employers would be authorized to use the system on a voluntary, nondiscriminatory basis to verify previous hires two years after enactment of this legislation. Federal, state, and local governmental entities and private employers in specified fields (relating to critical infrastructure) would be ***required*** to verify all previous hires within three years of enactment of this legislation. All other employers would be required to use the new system to verify the identity and employment eligibility of individuals not previously verified within six years of enactment.

Section 704: Basic Pilot Program

Section 704 would revise the date upon which the basic pilot program for employment verification systems becomes mandatory to two years after enactment of this legislation.

Section 705: Hiring Halls

This section would define "recruit or refer" for purposes of triggering obligations under this title to verify identity and employment eligibility. 'Refer' would be defined as the act of "sending or directing a person or transmitting documentation or information to another, directly or indirectly, with the intent of obtaining employment in the United States for such person." It would generally limit the definition to individuals seeking remuneration for such referral but it would encompass union hiring halls as well. 'Recruit' would be defined as "the act of soliciting a person, directly or indirectly, and referring the person to another with the intent of obtaining employment for that person. The same limitations and exceptions to those limitations would apply.

Section 706: Penalties
This section would significantly increase the civil penalties for hiring, recruiting, and referral violations. For the first violation, it would establish a minimum penalty of $5,000 for each unauthorized alien with respect to whom a violation occurred. For entities previously subject to cease and desist orders under this section, it would raise the minimum penalty to $5,000 and the maximum penalty to $10,000 for each offense. For entities previously subject to more than one such order, the minimum penalty would be raised to $25,000.

The civil penalty levels for paperwork violations would also be significantly increased. Paperwork offenses, including failure to use the new verification system, would be subject to a minimum $1,000 penalty and maximum $25,000 penalty. This section also would establish a scheme for mitigating the penalty structure by reducing the amounts in question based on the size of the employer.

This section would increase dramatically the criminal penalties for entities engaged in a pattern or practice of hiring and employing unauthorized workers. It would raise the maximum fine from $3,000 to $50,000 for each unauthorized worker and would establish a minimum period of imprisonment of one year (the *maximum* period under current law is six months).

Section 707: Report on Social Security Card-Based Employment Eligibility Verification
This section would require the Commissioner of Social Security, in consultation with the Secretaries of the Treasury and Homeland Security and the Attorney General, to submit a report to Congress evaluating a list of proposed requirements and changes, including: making social security cards with encrypted, machine-readable electronic identification strips and a digital photograph; creating a unified database to be maintained by DHS and including data from the SSA and DHS specifying work authorization of all individuals; and requiring all employers to verify employment eligibility using the new social security cards through a phone, electronic card-reading, or other mechanism.

Section 708: Extension of Preemption to Required Construction of Day Laborer Shelters[47]
Section 708 would amend INA § 274A(h)(2) to preclude states from requiring business entities to provide, build, fund, or maintain a shelter, structure, or designated area for use by day laborers at or near their places of business or take other steps to facilitate the employment of day laborers by others.

Section 709: Effective Date
Section 709 provides that the amendments contained in this title would take effect on the date of enactment, except that the requirements of persons and entities to comply with the employment eligibility verification process would take effect two years after the date of enactment.

Section 710: Limitation on Verification Responsibilities of Commissioner of Social Security[48]

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[47] This section was added to the bill on the House floor via the Sensenbrenner Manager's Amendment.
[48] This section was added to the bill on the House floor via a self-executing amendment by Rep. William Thomas (R-CA).

Section 710 would authorize the Social Security Administrator to carry out his duties with respect to the Employment Eligibility Verification system established in Title VII of the bill only to the extent that the Secretary of Homeland Security has provided, in advance, funds to cover the Commissioner's full costs in carrying out those responsibilities. Section 710 also would prohibit funds from the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund from being used to carry out such responsibilities.

Section 711: Report on Employment Eligibility Verification System[49]
Section 711 would require the Secretary of Homeland Security, within one year of the bill's enactment and one year thereafter, to report to Congress on the progress and problems associated with implementation of the Employment Eligibility Verification System, including information relating to the most efficient use of the system by small businesses.

TITLE VIII. IMMIGRATION LITIGATION ABUSE REDUCTION

Section 801: Board of Immigration Appeals Removal Order Authority
This section, which deals with when a BIA order becomes final, seeks to reverse 9th circuit precedent "requiring the BIA to remand cases in which it has reversed an IJ [immigration judge] decision granting an alien relief back to the IJ for entry of the decision." See *Noriega-Lopez v. Ashcroft*, 335 F.3d 874, 881 (9th Cir. 2003). This section would amend INA§ 101(a)(47), which has been interpreted as only permitting immigration judges to enter orders of deportation or removal, and would make the order final when the BIA decision is issued.

Section 802: Judicial Review of Visa Revocation
Section 802 would amend INA § 221(i) to eliminate completely judicial review over claims or challenges arising from the revocation of a visa after the holder of the visa has entered the U.S., thereby removing any judicial oversight over consular decisions. As background, the House, in last year's Intelligence Reform Bill, made visa revocation a ground of removal, but the Senate added in conference a clause allowing aliens facing removal to seek judicial review of their visa revocations. This section would reverse the Senate's attempt to inject a measure of due process into the revocation process.[50]

Section 803: Reinstatement
Section 803 would negate various circuit court rulings that prohibit reinstatement of removal without a hearing, or permit certain applications for adjustment of status, by amending INA § 241(a)(5) to state that reinstatement applies "regardless of the date of the original order or the date of the reentry"[51] and shall not require proceedings before an immigration judge under INA

[49] This section was added to the bill on the House floor via an amendment by Rep. Jeb Bradley (R-NH).
[50] By precluding review in any court, including review of narrow legal issues, section 802 seeks to reverse decisions that have allowed such review, such as *Ana Intern., Inc. v. Way*, 393 F.3d 886 (9th Cir. 2004) and *Knoetze v. U.S., Dept. of State*, 634 F.2d 207 (5th Cir. 1981).
[51] In *Fernandez-Vargas v. Ashcroft*, 394 F.3d 881 (10th Cir. 2005), *cert. granted*, 126 S.Ct. 544 (2005), the Supreme Court is considering whether the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 can be applied retroactively to eliminate relief from removal for persons who re-entered the United States before 1996. If enacted, it would affect court decisions in *Castro-Cortez v. INS*, 239 F.3d 1037, 1050-53 (9th Cir. 2001) (Congress unambiguously intended for INA § 241(a)(5) to be applied only to previously deported aliens who re-entered the country after the effective date of the statute); *Bejjani v. INS*, 271 F.3d 670, 676-77 (6th Cir. 2001) (same); *Arevalo v. Ashcroft*, 344 F.3d 1 (1st Cir. 2003) (INS reinstatement under 241(a)(5) negating pre-IIRIRA

section 240 or otherwise.[52] Such reinstatement also would preclude adjustment of status under 245(i). In addition, section 803 would amend INA § 242 to restrict any judicial review on the issue of reinstatement to the United States Court of Appeals for the District of Columbia Circuit and to limit the issues available for review.

Section 804: Withholding of Removal

Section 804 would import the REAL ID Act's "at least one central reason" requirement into the withholding statute by amending INA § 241(b)(3) to preclude a grant of withholding of removal unless the alien can establish that his or her life or freedom would be threatened in the country in question, and that race, religion, nationality, membership in a particular social group, or political opinion would be at least *one central reason* for such threat. The provision would be effective retroactive to the date of the REAL ID Act's passage into law (May 11, 2005).

Section 805: Certificate of Reviewability

Section 805 would implement an unprecedented, single-judge certification process for judicial review of orders of removal, so that circuit court review is no longer available unless a single judge determines that the petitioner has "made a substantial showing that the petition for review is likely to be granted" and issues a "certificate of reviewability." Specifically, section 805 would amend INA §242(b)(3) so that a petitioner's brief is reviewed by a single court of appeals judge who must issue a "certificate of reviewability" before the case can proceed to a panel for review. The decision of the single judge denying the petition for review would be unreviewable. In addition, if the judge fails to issue such a certificate within 60 days (with certain limited extensions available), the petition for review would be deemed denied. If no certificate of reviewability is issued, any stay of removal would dissolve automatically, the government would not be required to file its brief, and the petitioner could be removed without further recourse.[53]

Section 806: Waiver of Rights in Nonimmigrant Visa Issuance

Section 806 would prohibit the issuance of a nonimmigrant visa unless the applicant first waives his or her right to any review or appeal of an immigration officer's decision at the port of entry as to the alien's admissibility, and gives up his or her right to contest, other than on the basis of an application for asylum, any action for removal of the alien. This would require any person who wishes to enter the United States as a nonimmigrant to give up the right to a hearing before

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pending adjustment after an illegal reentry, has an impermissibly retroactive effect); *Sarmiento-Cisneros v. United States AG*, 381 F.3d 1277, 1284 (11th Cir. 2004) (adjustment application filed before the effective date of IIRIRA not affected by § 241(a)(5)'s elimination of the availability of discretionary relief because would attach a "new disability to a completed transaction"); *Alvarez-Portillo v. Ashcroft*, 280 F.3d 858 (8th Cir. 2002) (limiting retroactive application of portions of reinstatement rule).

[52] It is the implementing regulation governing the process under § 241(a)(5), which eliminates the basic procedural safeguards, that has been found objectionable. Under 8 C.F.R. § 241.8(a) (1999), a person charged with illegal reentry under § 241(a)(5) has no right to a hearing before an immigration judge. Rather, an immigration officer alone makes the relevant inquiries and decides whether to issue a reinstatement order. 8 C.F.R. § 241.8(a)(1)-(3).

[53] Section 805 ignores what courts have identified as the primary problem leading to a substantial number of appeals. As Judge Posner recently found, "the adjudication of [immigration] cases at the administrative level has fallen below the minimum standards of legal justice." *Bensilame v. Gonzales*, No. 04-1339 (7th Cir. Nov. 30, 2005) (compiling statistics for nine months in 2005 and finding that the Court reversed 40 percent of 136 petitions for review in immigration cases as compared with 18 percent in other cases where the government was the appellee). Section 805 does nothing to improve the very poor performance of the Board of Immigration Appeals, while undermining the ability of the courts to perform their constitutional function.

an immigration judge in the event that he or she is later charged with any immigration violation, and would jeopardize any opportunity a nonimmigrant might have to obtain cancellation of removal, adjustment of status, or any relief from removal other than asylum, in an impartial hearing before an immigration judge.[54]

Section 807: Clarification of Jurisdiction on Review[55]
Section 807 would bar judicial review of removal orders for certain criminal aliens as well as review of discretionary decisions by the Attorney General and DHS Secretary.

Section 808: Fees and Expenses in Judicial Proceedings[56]
Section 808 would amend INA § 242 to preclude courts from awarding fees or other expenses to an alien based upon the alien's status as a prevailing party in any proceedings relating to an order of removal unless the court of appeals concludes that the Attorney General's determination that the alien was removable under INA §§ 212 or 237 was not substantially justified.

TITLE IX. PRESCREENING OF AIR PASSENGERS[57]

Section 901: Immediate International Passenger Prescreening Pilot Program
Sec. 901 would require the Secretary of Homeland Security, within 90 days of enactment, to initiate a pilot program to evaluate the use of automated systems for the immediate prescreening of passengers on flights bound for the U.S.

TITLE X. FENCING AND OTHER BORDER SECURITY IMPROVEMENTS[58]

Section 1001: Findings
Section 1001 would make various congressional findings concerning border crossing deaths, narcotic smuggling along the Southwest border, and illegal border crossings.

Section 1002: Construction of Fencing and Security Improvements in Border Area from Pacific Ocean to Gulf of Mexico
Section 1002 would amend the IIRIRA to require DHS to construct two layers of reinforced fencing as well as additional physical barriers, roads, lighting, cameras and sensors in five different zones along the U.S. border with Mexico.

Section 1003: Northern Border Study

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[54] The sponsor's summary of the bill contends that this provision is analogous to the waiver of due process rights required under the existing Visa Waiver Program. This analogy is disingenuous at best, as this provision would adversely affect all nonimmigrants, including H-1B and L-1 visa holders, students, exchange visitors, journalists, diplomats, treaty traders, fiancés, spouses of United States citizens entering on K visas, athletes, entertainers, certain aliens with extraordinary ability, cultural exchange visitors, religious workers, witnesses, and victims of trafficking. The entry of these individuals is *not* analogous to that of tourists who, in exchange for being admitted visa-free for a period of 90 days, agree to waive their right to a removal hearing.

[55] This section was added to the bill on the House floor via an amendment by the Sensenbrenner Manager's Amendment.

[56] Id.

[57] This title was added to the bill on the House floor via an amendment by Rep. Peter DeFazio (D-OR).

[58] This title was added to the bill on the House floor via an amendment by Rep. Duncan Hunter (R-CA).

Section 1003 would require the Secretary of Homeland Security to conduct a study on the necessity and feasibility of building a state-of-the-art barrier system along the northern international land and maritime border of the United States, and to present the results of the study to Congress within one year of the bill's enactment.

Section 1004: Sense of the Congress
Section 1004 expresses the sense of Congress that the Secretary of Homeland Security shall take all necessary steps to secure the southwest international border for the purpose of saving lives, stopping illegal drug trafficking, and halting the flow of illegal entrants into the U.S.

TITLE XI. SECURITY AND FAIRNESS ENHANCEMENT[59]

Section 1101: Short Title
Section 1101 would designate the following short title for Title XI: the Security and Fairness Enhancement (SAFE) for America Act of 2005.

Section 1102: Elimination of the Diversity Immigrant Program
Section 1102 would eliminate the diversity visa program as of October 1, 2006.

TITLE XII. OATH OF RENUNCIATION AND ALLEGIANCE[60]

Section 1201: Oath of Renunciation and Allegiance
Section 1201 would require the Secretary of Homeland Security, in cooperation with the Secretary of State, to notify foreign embassies when one of their nationals naturalizes and takes the oath of allegiance to the U.S. This section would also codify the current oath of renunciation and allegiance.

TITLE XIII. ELIMINATION OF CORRUPTION AND PREVENTION OF ACQUISITION OF IMMIGRATION BENEFITS THROUGH FRAUD[61]

Section 1301: Short Title
Section 1301 would designate the following short title for Title XIII: the Taking Action to Keep Employees Accountable in Immigration Matters (TAKE AIM) Act of 2005.

Section 1302: Findings
Section 1302 would make a number of congressional findings with respect to immigration benefits fraud.

Section 1303: Structure of the Office of Security and Investigations
Section 1303 would provide that the Director of the newly created Office of Security and Investigations (OSI) would report directly to the Director of USCIS.

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[59] This title was added to the bill on the House floor via an amendment by Rep. Bob Goodlatte (R-VA).
[60] This title was added to the bill on the House floor via an amendment by Rep. Jim Ryun (R-KS).
[61] This title was added to the bill on the House floor via an amendment by Rep. Ed Royce (R-CA).

Section 1304: Authority of the Office of Security and Investigations to Investigate Internal Corruption

Section 1304 would set forth the broad powers of the OSI Director, including sole authority to receive, process, dispose of administratively, and investigate any criminal or noncriminal violations of the Immigration and Nationality Act, or title 18 U.S. Code, that are alleged to have been committed by any officer, agent, employee, or contract worker of USCIS, and that are referred to USCIS by the DHS Inspector General.

Section 1305: Authority of the Office of Security and Investigations to Detect and Investigate Immigration Benefits Fraud

Section 1305 would give the OSI the authority to conduct fraud detection operations, including data mining and analysis; investigate any criminal or noncriminal allegations of violations of the INA or title 18, U.S.C., that ICE declines to investigate; turn over to a U.S. Attorney for prosecution evidence that tends to establish such violations; and engage in information sharing, partnerships, and other collaborative efforts with any federal, state or local law enforcement entity, foreign partners, or other entity within the intelligence community.

Section 1306: Increase in Full-Time Office of Security and Investigations Personnel

Section 1306 would require the OSI Director, in each of fiscal years 2007 through 2010 to increase the number of criminal investigators, along with support personnel and equipment; investigations and compliance officers; and intelligence research specialists. A minimum of one-third of the personnel would be assigned to internal affairs investigations, the remainder devoted to investigating immigration benefits fraud.

Section 1307: Annual Report

Section 1307 would require the OSI Director to submit a report to Congress annually detailing the activities of the Office.

Section 1308: Investigations of Fraud to Precede Immigration Benefits Grant

Section 1308 would amend INA § 103 to preclude the granting of adjustment of status or any other immigration benefit, status or protection until any suspected or alleged fraud relating to the benefit application has been fully investigated and found to be unsubstantiated.

Section 1309: Elimination of Fraud Detection and National Security Office

Section 1309 would eliminate the Fraud Detection and National Security Office of USCIS and transfer all authority of such office to the OSI within 30 days of the bill's enactment.

Section 1310: Security Fee

Section 1310 would require the Secretary of Homeland Security to charge each alien who files an application for adjustment of status or an extension of stay a new security fee of $10, which the OSI will use to conduct investigations into allegations of internal corruption and benefits fraud. The same fee also would be collected from all immigrant and nonimmigrant visa applicants. Any fees collected under this section that are in excess of the OSI's operating budget would be made available to ICE for the sole purpose of investigating immigration benefits fraud referred to it by USCIS.

47LE5018

H.R. 4437

Final Vote Results for Roll Call 661

House vote on Sensenbrenner bill

FINAL VOTE RESULTS FOR ROLL CALL 661

(Republicans in roman; Democrats in *italic*; Independents underlined)

H R 4437 RECORDED VOTE 16-Dec-2005 10:33 PM
QUESTION: On Passage
BILL TITLE: Border Protection, Antiterrorism, and Illegal Immigration Control Act

	AYES	NOES	PRES	NV
REPUBLICAN	203	17		11
DEMOCRATIC	36	164		2
INDEPENDENT		1		
TOTALS	**239**	**182**		**13**

---- AYES 239 ---

Aderholt	Gerlach	Neugebauer
Akin	Gibbons	Ney
Alexander	Gilchrest	Northup
Bachus	Gillmor	Norwood
Baker	Gingrey	Nussle
Barrow	Gohmert	Osborne
Bass	Goode	Otter ID
Bean	Goodlatte	Oxley
Beauprez	*Gordon*	Paul
Berry	Granger	Pence
Biggert	Graves	*Peterson (MN)*
Bilirakis	Green (WI)	Peterson (PA)
Bishop (UT)	Gutknecht	Petri
Blackburn	Hall	Pickering
Blunt	Harris	Pitts
Boehlert	Hart	Platts
Bonilla	Hastert	Poe
Bonner	Hayes	Pombo
Bono	Hefley	*Pomeroy*
Boozman	Hensarling	Porter
Boren	Herger	Price (GA)
Boswell	*Herseth*	Pryce (OH)
Boucher	*Higgins*	Putnam
Boustany	Hoekstra	Ramstad
Bradley (NH)	*Holden*	Regula
Brady (TX)	Hostettler	Rehberg
Brown (SC)	Hulshof	Reichert WA
Brown-Waite, Ginny	Hunter	Renzi

Burgess
Burton (IN)
Buyer
Calvert
Camp (MI)
Campbell (CA)
Cannon
Cantor
Capito
Carter
Case
Castle
Chabot
Chandler
Chocola
Coble
Conaway
Costello
Cramer
Crenshaw
Cubin
Culberson
Davis (KY)
Davis (TN)
Davis, Tom
Deal (GA)
DeFazio OR
DeLay
Dent
Doolittle
Drake
Dreier
Duncan
Edwards
Ehlers
Emerson
English (PA)
Everett
Feeney
Ferguson
Fitzpatrick (PA)
Flake
Foley
Forbes
Ford
Fortenberry
Fossella

Inglis (SC)
Issa
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Kanjorski
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kuhl (NY)
Larsen (WA)
Latham
LaTourette
Lewis (CA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lucas
Lungren, Daniel E.
Mack
Manzullo
Marchant
Marshall
Matheson
McCaul (TX)
McCotter
McCrery
McHenry
McHugh
McIntyre
McKeon
McMorris WA
Melancon
Mica
Miller (FL)
Miller (MI)
Miller, Gary

Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ross
Royce
Ryan (WI)
Ryun (KS)
Salazar
Saxton
Schmidt
Schwarz (MI)
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson ID
Skelton
Smith (TX)
Sodrel
Stearns
Strickland
Sullivan
Sweeney
Tancredo
Tanner
Taylor (MS)
Taylor (NC)
Terry
Thornberry
Tiahrt
Udall (CO)
Upton
Visclosky
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Westmoreland

Foxx	*Moore (KS)*	Whitfield
Franks (AZ)	Moran (KS)	Wicker
Frelinghuysen	Murphy	Wilson (SC)
Gallegly	Musgrave	Wolf
Garrett (NJ)	Myrick	

--- NOES 182 ---

Abercrombie	*Harman*	*Owens*
Ackerman	*Hastings (FL)*	*Pallone*
Allen	Hastings (WA)	*Pascrell*
Andrews	Hayworth	*Pastor*
Baca	*Hinchey*	*Payne*
Baird	*Hinojosa*	Pearce
Baldwin	Hobson	*Pelosi*
Bartlett (MD)	*Holt*	*Price (NC)*
Becerra	*Honda*	Radanovich
Berkley	*Hooley* OK	*Rahall*
Berman	*Hoyer*	*Rangel*
Bishop (GA)	*Inslee* USA	*Reyes*
Bishop (NY)	*Israel*	Ros-Lehtinen
Blumenauer OK	*Jackson (IL)*	*Rothman*
Boehner	*Jackson-Lee (TX)*	*Roybal-Allard*
Boyd	*Jefferson*	*Ruppersberger*
Brady (PA)	*Johnson, E. B.*	*Rush*
Brown (OH)	*Jones (OH)*	*Ryan (OH)*
Brown, Corrine	*Kaptur*	*Sabo*
Butterfield	*Kennedy (RI)*	*Sánchez, Linda T.*
Capps	*Kildee*	*Sanchez, Loretta*
Capuano	*Kilpatrick (MI)*	Sanders
Cardin	*Kind*	*Schakowsky*
Cardoza	*Kucinich*	*Schiff*
Carnahan	*Langevin*	*Schwartz (PA)*
Carson	*Lantos*	*Scott (GA)*
Clay	*Larson (CT)*	*Scott (VA)*
Cleaver	Leach	*Serrano*
Clyburn	*Lee*	*Sherman*
Conyers	*Levin*	*Slaughter*
Cooper	*Lewis (GA)*	Smith (NJ)
Costa	*Lofgren, Zoe*	*Smith (WA)*
Crowley	*Lowey*	*Snyder*
Cuellar	*Lynch*	*Solis*
Cummings	*Maloney*	Souder
Davis (AL)	*Markey*	*Spratt*
Davis (CA)	*Matsui*	*Stark*
Davis (FL)	*McCollum (MN)*	*Stupak*

Davis (IL)	*McDermott*	*Tauscher*
DeGette	*McGovern*	Thomas
Delahunt	*McKinney*	*Thompson (CA)*
DeLauro	*McNulty*	*Thompson (MS)*
Diaz-Balart, L.	*Meehan*	Tiberi
Dicks	*Meek (FL)*	*Tierney*
Dingell	*Meeks (NY)*	*Towns*
Doggett	*Menendez*	Turner
Doyle	*Michaud*	*Udall (NM)*
Emanuel	*Millender-McDonald*	*Van Hollen*
Engel	*Miller (NC)*	*Velázquez*
Eshoo	*Miller, George*	*Wasserman Schultz*
Etheridge	*Mollohan*	*Waters*
Evans	*Moore (WI)*	*Watson*
Farr	*Moran (VA)*	*Watt*
Fattah	*Murtha*	*Waxman*
Filner	*Nadler*	*Weiner*
Frank (MA)	*Neal (MA)*	*Wexler*
Gonzalez	Nunes	Wilson (NM)
Green, Al	*Oberstar*	*Woolsey*
Green, Gene	*Obey*	*Wu*
Grijalva	*Olver*	*Wynn*
Gutierrez	*Ortiz*	

---- NOT VOTING 13 ---

Barrett (SC)	Hyde	*Napolitano*
Barton (TX)	Istook	Young (AK)
Cole (OK)	Kolbe	Young (FL)
Davis, Jo Ann	LaHood	
Diaz-Balart, M.	*McCarthy*	

American Immigration Lawyers Association

Side-by-Side Comparison of Select Provisions of the Senate Immigration Reform Proposals, with a Focus on the Architecture for Reform

American Immigration Lawyers Association

Side-by-Side Comparison of *Select Provisions* of the Senate Immigration Reform Proposals, with a Focus on the Architecture for Reform

	McCain/Kennedy (S. 1033)	Cornyn/Kyl (S. 1438)	Hagel (S. 1916, 1917, 1918, & 1919)	Specter (unnumbered draft)
Guest Worker Program for Persons Present in U.S. Without Authorization/ Path to Permanent Residence	• New H-5B temporary nonimmigrant status with an initial period of stay of 6 years. • No change of status permitted during the 6-year period. • Path to Permanent Residence: **YES** — alien may apply for adjustment of status in the U.S. after completing 6-year work requirement and fulfilling additional eligibility requirements.	• New Deferred Mandatory Departure (DMD) status - requires participating undocumented aliens to depart the U.S. before seeking readmission as either temporary or permanent immigrants. • All participants are required to depart within 5 years, with incentives provided for earlier departures. • Path to Permanent Residence: **NO**.	[two-tiered approach, with elements of both McCain/ Kennedy & Cornyn/Kyl] • New earned adjustment program for undocumented aliens who meet certain requirements, including residence in the U.S. for at least 5 years preceding the date of introduction, and a minimum of 3 years employment in the U.S. preceding the date of introduction, and 6 years after the date of enactment. • New Deferred Mandatory Departure (DMD) status for aliens who cannot prove the 5-year residency or 3-year pre-introduction work requirements for earned adjustment. • DMD status valid for 3 years, after which the alien is required to return home	[similar to Cornyn/Kyl] • New Deferred Mandatory Departure (DMD) status -- requires participating undocumented aliens to depart the U.S. before seeking readmission as either temporary or permanent immigrants. • All participants are required to depart within 5 years, with incentives provided for earlier departures. • Path to Permanent Residence: **LIMITED** – employer sponsorship is permitted under the temporary H-5A program (below), but DMD participants must first leave the country and reenter.

			and be readmitted through legal channels. • Path to Permanent Residence: YES.	
Guest Worker Program for Aliens Outside the U.S. (Future Flow)	• New H-5A visa valid for 3 years, and renewable one time for a total of 6 years after which alien must return home or be in the pipeline for a green card. • Portable to any employer in the U.S. • Travel permitted. • Initial annual cap of 400,000, with subsequent adjustments based on usage. • Employers can sponsor H-5As for permanent residence or, after 4 years in H-5A status, the alien can self-petition.	• New W visa valid for 2 years, after which the alien must return home for 1 year. An alien can participate up to 3 times, for a total of 6 years of employment, after which he or she will be ineligible for further participation. • Portable only to those employers authorized to participate in the program. • Travel permitted. • No cap, but the bill sets up a Temporary Worker Task Force, the report from which will form the basis for an annual limitation on the number of W visas. • No path to permanent status.	• New H-2C visa valid for 2 years with one 2-year extension permitted. • Portable after 3 months of employment w/ petitioning employer. • Annual cap of 250,000. • Employers can sponsor alien for permanent residence or, after 3 years in H-2C status, alien can self-petition.	• New H-5A visa valid for 3 years and renewable one time for a total of 6 years after which alien must return home or be in the pipeline for a green card. • Portable to any employer in the U.S. • Travel permitted. • Initial annual cap of 400,000, with subsequent adjustments based on usage. • Employers can sponsor H-5As for permanent residence.
Family Reunification & Backlog Reduction	• Exempts immediate relatives of U.S. citizens from the 480,000 annual cap on family-sponsored immigrant visas and reallocates the family-sponsored numbers. • Increases employment-based numbers from 140,000 to 290,000 per year, reallocates the distribution of those	• No change to family-based preference system. • Reallocates the distribution of employment-based numbers and provides for the recapture of unused numbers. • Eliminates the Diversity Visa Program. • Increases the per-country limits for both family- and	• Exempts immediate relatives of U.S. citizens from the 480,000 annual cap on family-sponsored immigrant visas. • Reclassifies spouses and minor children of LPRs as immediate relatives. • Reallocates the family-sponsored numbers.	[similar to McCain/Kennedy] • Exempts immediate relatives of U.S. citizens from the 480,000 annual cap on family-sponsored immigrant visas and reallocates the family-sponsored numbers. • Increases employment-based numbers from 140,000 to 290,000 per

	numbers, and provides for the recapture of unused numbers. • Increases the per-country limits for both family- and employment-based immigrants. • Lowers the income requirements for sponsoring a family member from 125% of the federal poverty guidelines to 100%. • Extends eligibility for the immediate relative category to the accompanying or following to join children of the children, spouses and parents of U.S. citizens. • Provides relief for widows and children.	employment-based immigrants. • Sets up a task force to study the impact of backlogs and delays.		year, reallocates the distribution of those numbers, and provides for the recapture of unused numbers. • Increases the per-country limits for both family- and employment-based immigrants. • Lowers the income requirements for sponsoring a family member from 125% of the federal poverty guidelines to 100%. • Provides relief for widows and children.
Worksite Enforcement	• Establishes a new Employment Eligibility Confirmation System to gradually replace the existing I-9 system. • Establishes a new Employment Eligibility Database to be implemented gradually and to include employment eligibility data for all individuals who are not citizens or nationals of the U.S. but who are authorized or seeking authorization to be employed in the U.S.	• Renames the Basic Pilot Program the Employment Eligibility Verification Program (EEVP) and require all employers to participate within 12 months of enactment. • Reduces type and number of documents used to establish identity and employment authorization. • Requires all persons to present a tamper-resistant, machine-readable Social Security card as evidence of employment authorization.	• Establishes a mandatory electronic worker verification system managed by DHS in conjunction with the SSA, and reduces the number of documents that can be used to verify employment authorization. • Participation phased-in, depending upon size & nature of employer. • Increases penalties for unauthorized employment and claims of false citizenship.	• Requires all employers to participate in the Employment Eligibility Verification Program. • Participation phased-in, depending upon size & nature of employer. • Reduces type and number of documents used to establish identity and employment authorization. • Provides for additional worksite enforcement and fraud detection agents.

	• Broadens the DOL's investigative authority to conduct random audits of employers. • Includes new worker protections and enhanced fines for illegal employment practices.	• 10,000 new investigators for worksite enforcement. • Establishes minimum standards for federal recognition of state-issued birth certificates.		
Border Enforcement	Focuses on a global strategy for border enforcement, including enhanced intelligence capabilities by, among other things: • Mandating the development and implementation of various plans and reports dealing with information-sharing, international and federal-state-local coordination, technology, anti-smuggling, and other border security initiatives. • Requiring the Secretary of State to provide a framework for better management, communication and coordination between the governments of North America, including the development of multilateral agreements to establish a North American security perimeter and improve border security south of Mexico.	Continues and expands heretofore unsuccessful policies, such as: • Authorizing 10,000 Border Patrol Agents, 1,250 new CBP Officers, $5 billion over 5 years for accompanying technology and infrastructure. • Codifying and expanding the Expedited Removal Program to the entirety of the southern land border as soon as operationally possible. • Authorizing the Border Patrol to maintain temporary or permanent checkpoints on roadways "close to the borders".	• Authorizes funds to pay for the 2,000 border patrol agents Congress added last year and increases the number of CBP officers over a 5-year period. • Codifies and expands the use of expedited removal to all border patrol sectors along the southern border as soon as operationally possible. • Requires the CBP to work with the Army Corps of Engineers on building border fences and closing border tunnels. • Authorizes the construction of new infrastructure along the border.	Similar to the Cornyn/Kyl approach—more agents, assets, infrastructure and money for the border, and expanded expedited removal, etc.

47LE6001

Agricultural Job Opportunity, Benefits and Security Act of 2005

Legislation > AgJOBS Backgrounder

Agricultural Job Opportunity, Benefits and Security Act of 2005 (AgJOBS)

The Legislation

The Agricultural Job Opportunity, Benefits and Security Act of 2005 (S. 359 and H.R. 884) was introduced by Senators Larry Craig (R.-ID) and Edward Kennedy (D-MA), and Representatives Chris Cannon (R-UT) and Howard Berman (D-CA). The Senate and the House bills have strong bipartisan support. In the 108th Congress, the Senate bill had 63 cosponsors, including a majority of both Democrats and Republicans, and 115 House cosponsors.

If enacted, this legislation would create an ◆earned adjustment◆ program enabling several hundred thousand H-2A guest workers and undocumented farmworkers to obtain temporary immigration status with the possibility of becoming permanent residents of the U.S. This legislation would only apply to workers who have already worked in U.S. agriculture. To obtain a ◆green card,◆ they would be obligated to continue working in agriculture for several more years. The legislation would also modify the H-2A temporary foreign agricultural worker program, which permits employers to hire guest workers to fill seasonal agricultural jobs. AgJOBS would streamline the application process for employers, would suspend wage increases for three years and provide guest workers with new labor law enforcement mechanisms.

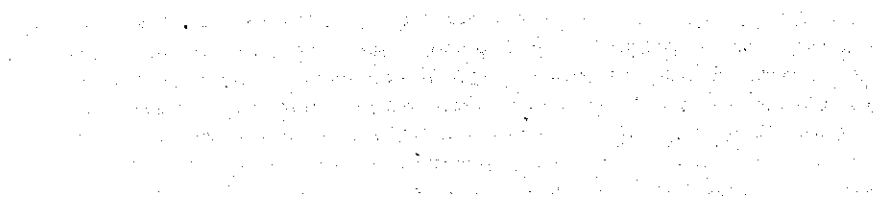
Why This Is Important

This legislation represents a reasonable compromise on immigration policy after nine years of conflict in Congress and several years of contentious negotiations. It is good for workers, employers and the nation. The legislation would help stabilize the agricultural labor force, providing employers with a reliable labor force and empowering farmworkers to improve the working and living conditions. The Government would know who resides in this country by giving undocumented workers the incentive to report themselves in return for the opportunity to earn immigration status.

The alternatives ◆ other legislative proposals or simply doing nothing -- are unacceptable. AgJOBS enjoys strong support from a diverse group, including the United Farm Workers, the National Council of Agricultural Employers, the U.S. Chamber of Commerce, the AFLCIO, and the National Council of La Raza.

For More Information

For more information, background, tools, visit the United Farm Workers website at www.ufw.org or contact Bruce Goldstein, at bgoldstein@nclr.org.



Cornyn-Kyl is Anti-Immigrant
Not Real Reform

Cornyn - Kyl is Anti-Immigrant, Not Real Reform

Senators Cornyn and Kyl have introduced an immigration reform bill that is the opposite of real comprehensive immigration reform. It's heavy on enforcement and light on the reforms that we believe are essential – providing a path to citizenship, reuniting families, restoring civil rights, and providing worker protections. Here are some of the more disturbing provisions:

"Mandatory Departure" status – no path to citizenship

The bill's new "mandatory departure" status is not a path to citizenship. To qualify, you have to turn yourself in and hand over any social security numbers or false documents you've used. You can stay for up to 5 years, but you have to pay huge fines every year. And you can't get legal permanent status while you're in "mandatory departure" status.

Family Reunification? No way

The bill does nothing to bring together the millions of families divided by uncrossable borders.

Status and Labor Protections for Immigrant Workers

The bill's temporary worker visa is not a real solution. Every 2 years, a worker would have to leave for a year, and family members can only visit for 30 days a year. And the bill does not give immigrant workers the same labor protections as other workers.

Enforcement

Increasing enforcement is the real purpose of the bill. It throws billions of dollars at border security and hiring border patrol agents when we have already proven that increasing border spending does not work. It gives the government new powers that affect all people in the United States, and takes away basic due process rights.

How Does the Kyl Amendment to the VAWA Reauthorization Bill Affect Immigrants

How Does the Kyl Amendment to the VAWA Reauthorization Bill Affect Immigrants?

AMENDMENT WOULD AUTHORIZE COLLECTION OF DNA

October 2005

■ **What does the Kyl amendment to the Violence Against Women Act (VAWA) reauthorization bill really do?**

- On Oct. 4, 2005, the United States Senate approved a bill reauthorizing the Violence Against Women Act (S. 1197). The bill includes an amendment offered by Sen. Jon Kyl (R-AZ) that would for the first time allow the federal government to collect the DNA of anyone who is arrested, even if the person is never charged or convicted, or of any "non–United States person" who is even briefly detained. The House VAWA reauthorization bill (HR 3402) does not contain a comparable provision.
- The DNA provision has no connection to protecting women from domestic violence and in fact may doubly victimize them if they are arrested, or even detained for questioning, based on false accusations from abusers. It raises constitutional and privacy concerns for citizens and immigrants alike whose genetic information would be put in a criminal database.* It will also exacerbate the huge current backlog in analysis and processing of DNA samples from persons convicted of felonies, sexual assaults and other serious crimes, and as a result will undermine public safety.
- For immigrants, the provision is stunningly egregious and overreaching. It would cast immigrants — both documented and undocumented — as criminals, requiring them to submit to seizure of their DNA for entry into a criminal database even in the absence of an arrest, and even when there is no hint of a criminal violation or charge of a civil immigration violation. Moreover, the provision contains no mechanism for immigrants to have their DNA sample removed from the criminal database, even when they were wrongly detained, have legal status, or even have become U.S. citizens.
- Allowing DNA collection from "non–United States persons who are detained" would cover an exceedingly broad variety of situations, including those in which no criminal or immigration proceedings are ever initiated or where no illegal activity is even suspected. As a result, the provision would essentially authorize the seizure of DNA from a wide range of immigrants and permit the entry of the DNA into the criminal database solely on the whim of federal authorities.
- The vastly increased authorization to collect DNA would be subject to abuses such as "DNA dragnets," in which innocent people in a geographic area could be asked to provide samples, sometimes based on racial profiling.

* See ACLU Letter to the Senate Judiciary Committee Regarding the Violence Against Women Act of 2005, Sept. 29, 2005, www.aclu.org/CriminalJustice/CriminalJustice.cfm?ID=19185&c=15.

NATIONAL IMMIGRATION LAW CENTER
www.nilc.org

LOS ANGELES (Headquarters)
3435 Wilshire Blvd
Suite 2850
Los Angeles, CA 90010
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Oakland, CA 94612
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■ How does the Kyl amendment change current law for collecting DNA and putting DNA-related information into a database?

- Currently, the federal government is authorized to collect DNA samples only from persons convicted of felonies, violent crimes, aggravated sexual abuse, or serious military offenses. 42 USC 14135a. Analysis of the samples is stored in a federal database called CODIS.
- The Kyl DNA amendment would allow DNA collection from anyone who is arrested for any reason, regardless of whether the person is convicted of a crime or even whether a charge is filed against the person or reasonable suspicion exists to justify the arrest. It would also expand DNA collection to the civil immigration context.

■ How does the Kyl amendment apply to immigrants?

- The Kyl amendment provides that "the Attorney General may, as prescribed by the Attorney General in regulation, collect DNA samples from individuals who are arrested or from non–United States persons who are detained under authority of the United States. The Attorney General may delegate this function within the Department of Justice, as provided in section 510 of title 28, United States Code, and may also authorize and direct any other agency of the United States that arrests or detains individuals or supervises individuals facing charges to carry out any function and exercise any power of the Attorney General under this section" (emphasis added).
- Under this provision, the attorney general could authorize the Dept. of Homeland Security and its immigration agencies to collect DNA samples from immigrants who are arrested and "non–United States persons" who are detained under authority of the United States. In fact, there is reason to believe this is one of the main intended purposes of the amendment.

■ Who is a "non–United States person"?

- A "non–United States person" is someone who is not a citizen or a lawful permanent resident of the United States. Under the Foreign Intelligence Surveillance Act, "United States person" means a citizen of the United States, an alien lawfully admitted for permanent residence, and certain unincorporated associations and corporations. 50 USC sec. 1801(i).

■ Doesn't "non–United States person" just mean people who are undocumented?

- No, among immigrants only lawful permanent residents are excluded from the category of non–U.S. person. All other lawfully present non–U.S. citizens are non–U.S. persons, including those who are:
  - Applicants for lawful permanent residence status
  - Tourists
  - Business visitors
  - Investors
  - Diplomats
  - Journalists
  - Scientists, artists, educators, businesspeople or athletes of extraordinary ability
  - Entertainers and models
  - Cultural exchange participants
  - Managers
  - Students

- Employees of international organizations
- Highly skilled workers
- Seasonal workers
- Teachers, researchers or doctors in U.S. Information Agency–designated programs
- Fiancé(e)s of U.S. citizens
- Nurses
- Religious workers
- Asylees
- Refugees
- Torture victims
- Parolees
- People granted temporary protected status
- People cooperating in criminal prosecutions
- Victims of trafficking
- Crewmen
- Victims of substantial physical or mental abuse
- Spouse and children of people in above categories
- Holders of border crossing identification cards

■ Doesn't "detained" only mean having been taken into custody by immigration authorities and charged with an immigration offense?

- No. "Detained" does not have a statutory definition. In the immigration context, "detained" covers a wide spectrum of circumstances.
- The dictionary definition of "detained" is to keep from proceeding or to keep in custody or temporary confinement. Noncitizens could be considered detained when they are:
  - Sent to secondary inspection in an airport for interrogation or verification of documents;
  - Required by immigration agents to prove their immigration status in a worksite immigration raid or on the street;
  - Subjected to examination upon arrival in the U.S.;
  - Detained while awaiting consideration of applications for asylum or other benefits;
  - Held as material witnesses;
  - Questioned because they witnessed or were victims of a crime; or
  - Stopped at an immigration checkpoint away from the border.
- Being a person in custody who has been charged with civil immigration offenses is only one of the many ways in which a noncitizen may be detained.
- Federal authorities would be able to require non–U.S. persons to provide their DNA for inclusion in the CODIS database if they are detained for any reason, even briefly and innocently, and regardless of whether the detention has any relation to illegal activity.

■ Would non–U.S. persons be eligible to have their DNA expunged from the DNA database?

- No. The DNA provision provides for expungement of the DNA from the database only when a conviction has been overturned, or, in the case of an arrest, when the charge has been dismissed, has resulted in an acquittal, or if no charge was filed within the applicable time period.

- The provision does not authorize the expungement of the DNA of non–United States persons who are detained.
- That DNA would remain part of a criminal database, and immigrants would not be able to have their DNA expunged even if they were wrongly detained or had legal immigration status or became citizens.
- Expungement is not automatic even for those people eligible for it and happens only upon filing of a certified copy of a final court order establishing that a conviction has been overturned, or that a charge has been dismissed or has resulted in an acquittal, or that no charge was filed within the applicable time period. Even this provision is problematic for people never charged who would not be able to present a certified copy of a court order establishing that they were never charged.

■ Could DNA be collected from lawful permanent residents who are arrested for civil immigration violations, and can the DNA be kept in the criminal database?

- Yes. Immigration officers may arrest any noncitizen whom they believe is in violation of any law regarding the admission, exclusion, expulsion or removal of aliens. The DNA could be collected under the section of the Kyl amendment authorizing the collection of DNA from individuals who are arrested, even though it was not an arrest for a criminal violation.
- Lawful permanent residents would not, however, be eligible to have their DNA expunged in the same way as other individuals whose DNA was taken when they were arrested. The expungement provisions apply only when convictions are overturned, or when charges are dismissed or acquittals occur, or when no charges are filed in the applicable time period. Only the term "charges" has possible application in the civil immigration context.

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A Summary of the Secure America and Orderly Immigration Act

S. 1033 / H.R. 2330

A SUMMARY OF THE
Secure America and Orderly Immigration Act
(S. 1033 / H.R. 2330)

The Secure America and Orderly Immigration Act of 2005 was introduced by Senators Kennedy (D-MA) and McCain (R-AZ) in the Senate, and Representatives Flake (R-AZ), Gutierrez (D-IL), and Kolbe (R-AZ) in the House of Representatives on May 12, 2005. The following chart is a section-by-section summary of the bill. An article that summarizes and analyzes the different provisions in the bill is also available at www.nilc.org.

June 2005

PROVISION	SUMMARY
TITLE I	**BORDER SECURITY**
National Strategy for Border Security (§ 111)	♦ The secretary of the Dept. of Homeland Security (DHS) shall develop and implement a national strategy for border security, including a security plan for the Border Patrol and the field offices of the Bureau of Customs and Border Protection (BCBP) of DHS. The strategy is to include (1) an evaluation of points of entry and portions of the international border that must be protected from illegal transit; (2) a description of the most appropriate, practical, and cost-effective means of defending the border against security threats and illegal transit, including technology, intelligence capacity, equipment, personnel, and training; (3) risk-based priorities for assuring border security, with realistic deadlines for addressing them; (4) a strategic plan for security enforcement and border lands management that includes coordination among federal, state, regional, local, and tribal authorities; (5) prioritization of research and development objectives; (6) update of the 2001 Port of Entry Infrastructure Assessment Study conducted by the legacy U.S. Customs Service; (7) strategic interior enforcement coordination plans; and (8) strategic enforcement coordination plans with overseas personnel of DHS and the Dept. of State to end human smuggling and trafficking activities.
Reports to Congress (§ 112)	♦ No later than one year after enactment of the bill, the DHS secretary is to submit the strategy to the Homeland Security and Judiciary committees of the House and Senate. Subsequently, the secretary is to submit revisions to the plan to the committees at least every two years, as well as annual progress reports.
Authorization of Appropriations (§ 113)	♦ Appropriations are authorized for 5 fiscal years.
Border Security Coordination Plan (§ 121)	♦ The DHS secretary (in coordination with federal, state, local, and tribal authorities) shall develop and implement a plan on law enforcement, emergency response, and security-related responsibilities regarding the international border of the U.S. The purpose is to ensure that security is not compromised when jurisdiction for security changes or is shared. ♦ Methods must be considered to coordinate emergency responses, improve data-sharing and communications, promote research and development, and combine personnel and resources. ♦ A report on the plan must be submitted to appropriate congressional committees no later than one year after its implementation.
Border Security Advisory Committee (§ 122)	♦ The DHS secretary is authorized to establish a Border Security Advisory Committee to advise and make recommendations to the secretary. The advisory committee is to be composed of representatives of border states, local law enforcement agencies, community officials, tribal authorities, and other interested parties representing a broad cross section of perspectives.

ABBREVIATIONS: BCBP: Bureau of Customs and Border Protection • DHS: Department of Homeland Security • DOL: Department of Labor • EECS: Employment Eligibility Confirmation System • FLSA: Fair Labor Standards Act • ICE: Bureau of Immigration and Customs Enforcement • LPR: Lawful Permanent Resident • SSA: Social Security Administration

PROVISION	SUMMARY
Programs on the Use of Technologies (§ 123)	♦ Within 60 days of enactment of the bill, the DHS secretary must develop and implement a program to fully integrate aerial surveillance technologies into border security, to be done in conjunction with the border surveillance plan required by section 5201 of the Intelligence Reform and Terrorism Prevention Act of 2004. In developing the program, the secretary must consult with the secretary of Defense and the administrator of the Federal Aviation Administration. ♦ The program must include the use of a variety of aerial surveillance technologies, including unmanned aerial vehicles, in a variety of topographies and areas, including populated and unpopulated areas on or near the international border. It must also evaluate the cost and effectiveness of various technologies in different circumstances, as well as liability, safety, and privacy concerns relating to their use. ♦ Within one year of implementation of the program, the DHS secretary shall submit a report to appropriate congressional committees, including recommendations for enhancement. The secretary is also authorized to carry out demonstration programs to strengthen communication, information sharing, technology, security, intelligence benefits, and enforcement activities on the border that will not diminish international trade and commerce.
Combating Human Smuggling (§ 124)	♦ The DHS secretary shall develop and implement a plan to improve coordination between ICE, BCBP, and federal, state, local or tribal authorities to combat human smuggling. The plan shall include interoperability of databases, personnel training, programs to target smuggling networks, effective utilization of visas for victims of trafficking and other crimes, consideration of investigatory techniques, equipment and procedures to prevent, detect, and prosecute international money laundering, and joint measures with the State Dept. to enhance intelligence sharing and cooperation with foreign governments. ♦ The DHS secretary must submit a report to Congress regarding the plan no later than one year after its implementation, including recommendations for legislative action.
Savings Clause (§ 125)	♦ Nothing in the sections of the bill regarding border security strategic planning or border infrastructure, technology, integration and security enhancement (sections 111–125) give any state or local entity any additional authority to enforce federal immigration law.
North American Security Initiative (§ 131)	♦ The secretary of State shall enhance the security of the U.S., Canada, and Mexico by providing a framework for better management, communication and coordination among their governments.
Information Sharing Agreements (§ 132)	♦ The secretary of State, in coordination with the DHS secretary and the government of Mexico, shall negotiate an agreement with Mexico for cooperation in the screening of third-country nationals using Mexico as a transit corridor for entry into the U.S. and for providing technical assistance to support stronger immigration control at the border with Mexico.
Improving the Security of Mexico's Southern Border (§ 133)	♦ The secretary of State, in coordination with the DHS secretary, the Canadian Dept. of Foreign Affairs, and the government of Mexico shall establish a program to assess the needs of the governments of Central American countries in maintaining their border security, and to use this assessment to determine the financial and technical support needed by Central American countries from Canada, Mexico, and the U.S. for this purpose. ♦ The program shall also provide technical assistance to Central American countries to secure their issuance of passports and travel documents and encourage them to control and prevent alien smuggling and use of fraudulent documents and to share information with the U.S., Canada, and Mexico.

PROVISION	SUMMARY
Improving the Security of Mexico's Southern Border, cont. (§ 133)	♦ The DHS secretary, in consultation with the secretary of State and Central American governments, shall provide robust law enforcement assistance to the Central American governments to increase their ability to dismantle human smuggling organizations and improve border control. The secretary of State, in consultation with the DHS secretary and the governments of Mexico, Guatemala, Belize and neighboring contiguous countries shall establish a program to provide needed equipment, vehicles, and technical assistance to patrol the international borders between Mexico and Guatemala and between Mexico and Belize. ♦ The secretary of State, in coordination with the DHS secretary, the FBI director, the government of Mexico, and Central American government officials shall establish a program and database to track Central American gang activities, focusing on the identification of returning criminal deportees. The program will include developing a mechanism to notify governments before gang members are deported, providing support for the reintegration of these deportees, and developing an agreement for sharing all relevant information with appropriate agencies in Mexico and Central America.
TITLE II	**STATE CRIMINAL ALIEN ASSISTANCE**
Authorization of Appropriations (§ 201)	♦ Funding for the State Criminal Alien Assistance Program is reauthorized through 2011: such sums as are necessary for fiscal year 2005; $750 million for 2006; $850 million for 2007; and $950 million for 2008–2011. ♦ Funds may be used only for correctional purposes.
Reimbursement of States for Costs Relating to Incarceration of Aliens (§ 202)	♦ Establishes a new program to reimburse states for "indirect" costs (including court costs, county attorney costs, detention costs, criminal proceedings, expenditures that do not involve going to trial, indigent defense costs, and unsupervised probation costs) related to incarcerating noncitizens. ♦ Program will give "special consideration" to states that share a border with Mexico or Canada or have an area in the state where a large number of undocumented noncitizens live relative to the general population of that area. ♦ $200,000,000 is allocated for the program for 2005–2011.
Reimbursement of States for Preconviction Costs Related to Incarceration of Aliens (§ 203)	♦ Allows states to seek reimbursement for preconviction costs associated with incarcerating noncitizens.
TITLE III	**ESSENTIAL WORKER VISA PROGRAM**
Essential Workers (H-5A) (§ 301)	♦ Creates a new temporary workers visa, "H-5A," for nonimmigrant workers (i.e., workers who have no intention of abandoning their foreign residence). ♦ The visa will be available for workers to perform labor or services other than those covered under the current law for agricultural or high-skilled work (i.e., nonimmigrants described in the current provisions for H-1B, H-2A, L, O, P, or R status).
Admission of H-5A Workers (§ 302)	♦ Eligible applicants for an H-5A visa must demonstrate that they are capable of performing the labor or service qualifying them for the visa and must provide the consular officer evidence of a job offer in the U.S. "Evidence of employment" must be provided through a new Employment Eligibility Confirmation System established by § 402 (see below). Applicants must also pay a $500 application fee, undergo a medical examination, and pass a criminal background and security check. ♦ Applicants must be "admissible" under immigration law. Many grounds of inadmissibility may be waived, but not most criminal grounds, security and related grounds, or those for polygamists and child abductors. A waiver under this section requires payment of a $1500 waiver fine.

PROVISION	SUMMARY
Admission of H-5A Workers, cont. (§ 302)	♦ Applicants for H-5A status are not subject to the bars for having failed to comply with voluntary departure or for being subject to reinstatement of removal. ♦ Noncitizens admitted to the U.S. under H-5A visas shall initially be authorized to remain for three years, and this authorization may be extended for an additional three-year period, for a maximum period of 6 years. H-5A visa holders must continue to be employed while in the U.S., and if they are unemployed for 45 or more consecutive days they must return to their home country or country of last residence, or they are subject to removal proceedings. H-5A visa–holders can travel outside of the U.S. and may be readmitted into the U.S. without having to obtain a new visa if their H-5A visa has not expired. H-5A-holders who return home due to unemployment may reenter the U.S. using the same visa, provided that they meet the same requirements as for their original entry. ♦ H-5A visas are portable, which means the H-5A visa–holder's status is not limited to one particular employer, and he or she may accept new employment with a subsequent employer. ♦ H-5A visa holders will not be eligible to renew their nonimmigrant status if they willfully violate any material terms or conditions of their status. They may, however, apply for a waiver to this bar for technical violations, inadvertent errors, or violations that were not their fault.
Employer Obligations Under the H-5A Program (§ 303)	♦ Employers who employ H-5A visa–holders are liable and punishable under all applicable federal, state, and local laws that protect U.S. workers (e.g., employment, labor, and tort laws). ♦ Employers of H-5A visa holders shall comply with the Employment Eligibility Confirmation System (as established by § 402 — see below).
Worker Protections Under the H-5A Program (§ 304)	♦ H-5A visa–holders shall be "employees" under the FLSA. H-5A visa holders shall not be treated as independent contractors. ♦ H-5A visa–holders are covered under all federal, state, or local labor or employment laws that would be apply to a U.S. worker employed in a similar position. They cannot be denied any right or remedy under these laws because of their immigration status as a nonimmigrant worker. ♦ Employers who employ H-5A visa–holders shall comply with all applicable federal, state and local tax revenue laws. ♦ An employer must provide H-5A visa–holders with the same wages, benefits, and working conditions that are provided by the employer to U.S. workers similarly employed in the same occupation and the same place of employment. ♦ An employer may not hire H-5A visa–holders as replacement workers if there is a strike or lockout in the course of a labor dispute. ♦ Employers are prohibited from threatening to or actually withdrawing an H-5A petition in retaliation for the worker's exercise of a right protected by the Act. It is also unlawful for an employer or labor contractor of H-5A visa–holders to intimidate, threaten, restrain, coerce, retaliate, discharge, or in any other manner discriminate against an employee or former employee for disclosing information concerning a violation of, or cooperating in, an investigation or other proceedings concerning compliance with the requirements of this Act. ♦ Foreign labor contractors who recruit H-5A visa holders must register with and be certified by the secretary of Labor (for two-year periods). Foreign labor contractors shall disclose to each H-5A worker who they recruit as to the following: the place of employment; the amount of wages they will receive for their work; a description of employment activities; the period of employment; any other employee benefits and any costs to be charged for each benefit; any travel or transportation expenses to be assessed; the existence of any labor organizing effort, strike, lockout, or other labor dispute; the existence of any arrangement where the contractor receives a commission from the provision of items or services to workers; the extent to which workers will be compensated through workers' compensation, private insurance or otherwise for workplace injuries or deaths; any education or training to be provide or required and who will pay such costs; and a statement provided by DOL describing the protections for workers recruited abroad.

PROVISION	SUMMARY
Worker Protections under the H-5A Program, cont. (§ 304)	♦ The information required to be disclosed by the foreign labor contractor shall be provided in English or, as necessary and reasonable, in the language of the worker being recruited. ♦ Any transportation costs charged by the foreign labor contractor or employer must be reasonable. ♦ Every two years, employers must notify the secretary of Labor of the identity of any foreign contractor hired by the employer. ♦ No person can engage in foreign labor recruiting without a certificate of registration from the secretary of Labor specifying the activities that the person is authorized to perform. Employers can only use certified labor contractors to recruit foreign labor. Unless suspended or revoked, certificates are good for two years. ♦ The secretary of Labor must issue regulations establishing an electronic process for the investigation and approval of a certificate of registration not later than 14 days after the application was filed. Under the regulations, the secretary may refuse to issue or renew, or may suspend or revoke, a certificate for the following reasons: (1) the applicant has knowingly made a material misrepresentation in the application; (2) the applicant is applying for a foreign labor contractor who has been banned from receiving a certificate or does not qualify for a certificate; or (3) the applicant has failed to comply with the requirements of the Act. ♦ The secretary of Labor may require a foreign labor contractor to post a bond sufficient to ensure the protection of individuals recruited by the contractor. ♦ Workers who are harmed by a foreign labor contractor that violates the provisions governing its recruitment practices may bring a complaint (within 12 months of the date of such violation) through an administrative process to be established by the secretary of Labor. ♦ The process shall include an investigation (that takes not longer than 30 days after the complaint was filed) to determine whether the worker had "reasonable cause" to bring the claim, proper notice, and a timely hearing. Not later than 60 days after the secretary finds that there is reasonable cause, the secretary will issue a notice to the interested parties and offer an opportunity for a hearing on the complaint. Claimants who prevail are entitled to reasonable attorney's fees and costs. The secretary may also bring a judicial action to obtain injunctive relief and damages for violations. If the secretary of Labor finds a violation, the secretary may impose administrative remedies and penalties, including back wages, fringe benefits, and/or civil monetary or criminal penalties.
Market-Based Numerical Limitations for the H-5A Program (§ 305)	♦ 400,000 H-5A visas will be made available for the first fiscal year of implementation of the program. The bill lays out additional percentages of the allocated number that shall be made available for each subsequent fiscal quarter if the 400,000-visa cap is reached.
Adjustment of Status to Lawful Permanent Resident Status (§ 306)	♦ H-5A visa–holders are eligible to adjust their status to LPR status through existing employer-based petitions. ♦ H-5A visa–holders who have accumulated four years of work within the U.S. are also eligible to adjust to LPR status through self-petitioning if they are physically present in the U.S. and demonstrate basic knowledge of English and U.S. civics or that they are satisfactorily pursuing a course of study to meet these requirements (satisfactory demonstration of knowledge of these requirements will be applicable to their future naturalization application). H-5A visa–holders who self-petition for LPR status or who are beneficiaries of pending labor certification or immigrant visa petitions can receive an extension of their stay in the U.S. (in one-year increments) until a final decision on their application for LPR status is made. ♦ H-5A visa–holders can also adjust to LPR status through any other means currently available in immigration law (e.g., through a family-based petition or the diversity visa lottery).

PROVISION	SUMMARY
Essential Worker Visa Program Task Force (§ 307)	♦ A task force comprised of 10 persons of pertinent areas of expertise shall be established to study the Essential Worker Visa Program and make recommendations to Congress. Members of the task force shall be appointed by the president and leadership of both houses of Congress, and no one party may constitute a majority of the membership. ♦ No later than two years after implementation of the program, the task force will submit a report to Congress evaluating a variety of aspects of the program. A final report will be submitted no later than four years after the submission of the initial report.
Willing Worker-Willing Employer Job Registry (§ 308)	♦ The secretary of Labor will direct the modification of the national system of public labor exchange services, known as "America's Job Bank," to incorporate nonimmigrant workers and essential worker employment opportunities available to U.S. workers.
Authorization of Appropriations (§ 309)	♦ Appropriations are authorized as may be necessary to carry out the Essential Worker Visa Program for each fiscal year beginning with the year of the enactment through seven years after the implementation of the program.
TITLE IV	**ENFORCEMENT**
Document and Visa Requirements (§ 401)	♦ No later than six months after the enactment of this Act, all visas issued by the secretary of State and immigration-related documents issued by DHS must: (1) be machine-readable and tamper-resistant; (2) use biometric identifiers; (3) comply with the biometric and document identifying standards established by the International Civil Aviation Organization; and (4) be compatible with the U.S. Visitor and Immigrant Status Indicator Technology and the Employment Eligibility Confirmation System. ♦ The information on the visas or immigration documents must include: (1) the alien's name, date and place of birth, alien registration or visa number, and SSN (if applicable); (2) the alien's citizenship and immigration status; and (3) the date that the alien's authorization to work in the U.S. expires (if appropriate).
Employment Eligibility Confirmation System (§ 402)	♦ Directs SSA, in consultation with DHS, to create a new Employment Eligibility Confirmation System (EECS) that allows employers who have hired individuals under the H-5A visa program to electronically verify their identity and employment eligibility through machine-readable documents. ♦ The EECS will eventually replace the current Form I-9 employment eligibility verification system. ♦ Requires the EECS to provide a confirmation or tentative nonconfirmation of the individual's identity and employment eligibility no later than one working day after the initial inquiry. SSA, in consultation with DHS, must establish a secondary verification process for cases of tentative nonconfirmation; the employer must make a secondary verification inquiry within 10 days after receiving a tentative nonconfirmation. If an employee chooses to contest a secondary nonconfirmation, the employer shall provide the employee with a referral letter and instruct the employee to resolve the discrepancy within 10 working days with DHS and/or SSA. An individual's failure to contest a secondary nonconfirmation cannot be used as proof to the employer that the worker is undocumented. ♦ Requires the EECS to provide a confirmation or tentative nonconfirmation of the individual's identity and employment eligibility no later than one working day after the initial inquiry. SSA, in consultation with DHS, must establish a secondary verification process for cases of tentative nonconfirmations; however, the employer must make a secondary verification inquiry within 10 days after receiving a tentative nonconfirmation. If an employee contests a secondary nonconfirmation, the employer shall provide the employee with a referral letter and instruct the employee to resolve the discrepancy within 10 working days with DHS and/or SSA. An individual's failure to contest a secondary nonconfirmation cannot be considered to constitute knowledge on the part of the employer that the worker is undocumented. ♦ Individuals must be allowed to view their own records and contact the appropriate agency to correct any errors through an expedited process established by SSA and DHS.

PROVISION	SUMMARY
Employment Eligibility Confirmation System, cont. (§ 402)	♦ The EECS must be designed to prevent discrimination based on citizenship status and national origin. ♦ It is an unlawful immigration-related employment practice for employers or other third parties (1) to use the EECS selectively or without authorization; (2) to use the EECS prior to an offer of employment; (3) to use the EECS to exclude certain individuals from consideration for employment as a result of a perceived likelihood that additional verification will be required; (4) to use the EECS to deny certain employment benefits, otherwise interfere with the labor rights of employees, or any other unlawful employment practice; and (5) to take adverse action against any person, including terminating or suspending an employee who has received a tentative nonconfirmation. ♦ The data collected by the EECS must include, for non–U.S. citizens: country of origin, immigration status, employment eligibility, occupation, metropolitan statistical area of employment, annual compensation paid, period of employment eligibility, annual commencement date, and employment termination date. ♦ SSA must establish by regulation a process to require employers to conduct annual reverifications of the employment eligibility of all individuals by using machine-readable documents or telephone or electronic communication. ♦ SSA and DHS must issue regulations protecting information in the database from unauthorized disclosure. Employers must: (1) notify employees that prospective employees that the EECS may be used for immigration enforcement purposes; (2) verify the identification and employment authorization status for newly hired individuals not later than 3 days after hire; (3) provide the occupation, statistical area of employment and annual compensation for each employee hired; (5) retain the code received indicating confirmation or tentative nonconfirmation; and (6) provide a copy of the employment verification receipt to the employee. ♦ A person or entity that establishes good faith compliance with the requirements of the EECS with respect to the employment of an individual has established an affirmative defense that the person or entity has not violated the law. A good faith defense does not apply if a person or entity engages in unlawful immigration-related employment practices established above. ♦ To the maximum extent practicable, SSA and DHS must implement an interim system to confirm employment eligibility before implementation of the EECS. ♦ The comptroller general shall submit a report to the House and Senate Judiciary Committees not later than three months after the second and third year that the EECS is in effect. The report must include: (1) an assessment of the impact of the EECS on the employment of unauthorized workers; (2) an assessment of the accuracy of the database maintained by SSA and DHS, and timeliness and accuracy of responses from DHS and SSA to employers; (3) an assessment of the privacy, confidentiality and security of the EECS; (4) an assessment of if the EECS is being implemented in a nondiscriminatory manner; and (5) include recommendations on whether or not the EECS should be modified.
Improved Entry and Exit Data System (§ 403)	♦ Amends the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to provide for the collection of machine-readable information from a non–U.S. citizen's visa or immigration document upon entry to and exit from the U.S. to determine if he/she is entering or is present unlawfully.
Department of Labor Investigative Authorities (§ 404)	♦ The secretary of Labor may initiate an investigation of any employer that employs H-5A workers if the secretary, or the secretary's designee, certifies that a reasonable cause exists to believe that the employer is in violation of the Act. In determining whether a reasonable cause exists, the secretary shall monitor the Willing Worker – Willing Employer Electronic Job Registry. The secretary shall also monitor the EECS by taking into account whether an employer has a high volume of "tentative nonconfirmations" relative to other comparable employers; whether an employer rarely or never screens new employees; whether the employer's workers rarely or never choose to contest discrepancies in the secondary verification process; or any other indicators that the employer is using the EECS in an illicit, inappropriate, or discriminatory manner. The secretary can also consider any additional evidence the secretary determines appropriate.

PROVISION	SUMMARY
Department of Labor Investigative Authorities, cont. (§ 404)	♦ Absent other evidence of noncompliance by an employer, the secretary shall not initiate an investigation due to an employer's "lack of completeness" or for obvious inaccuracies in hiring and employing H-5A workers.
Protection of Employment Rights (§ 405)	♦ SSA and DHS must establish a process under which an H-5A worker who files a "nonfrivolous" complaint regarding a violation of this Act is allowed to remain and work in the U.S. with another employer.
Increased Fines for Prohibited Behavior (§ 406)	♦ Fines for engaging in unfair immigration-related employment practices such as national origin and citizenship status discrimination, document abuse, and retaliation are increased as follows: (1) civil penalties may range from $500 to $4,000 for each individual discriminated against; (2) employers who have previously violated the law once are subject to a civil penalty ranging from $4,000 to $10,000 for each individual discriminated against; and (3) employers who have previously violated the law more than once are subject to a civil penalty ranging from $6,000 to $20,000 for each individual discriminated against.
TITLE V	**PROMOTING CIRCULAR MIGRATION PATTERNS**
Labor Migration Facilitation Programs (§ 501)	♦ The secretary of State is authorized to enter into an agreement to establish and administer a labor migration facilitation program jointly with the appropriate official of a foreign government whose citizens participate in the H-5A Essential Worker Visa Program. ♦ Elements of such a program may include implementing a program to assist workers in applying for H-5A visas, establishing programs to create economic incentives for H-5A visa–holders to return to their home country, and assisting the foreign government to develop and promote a reintegration program for H-5A visa–holders who return to their home country.
Bilateral Efforts with Mexico to Reduce Migration Pressures and Costs (§ 502)	♦ Makes "findings" regarding migration from Mexico to the U.S., including the importance of remittances from Mexicans in the U.S., barriers to economic growth in Mexico, and measures to promote economic growth in Mexico through the Partnership for Prosperity entered into by the presidents of the U.S. and Mexico in 2001 and the agreement on Security and Prosperity Partnership entered into by the presidents of Mexico and the U.S. and the prime minister of Canada in 2005. ♦ Includes a "Sense of Congress" resolution that the U.S. and Mexico should accelerate the Partnership for Prosperity to help generate economic growth and improve the standard of living in Mexico, which will lead to reduced migration by assisting Mexican efforts to expand economic opportunities in Mexico, strengthen governance, strengthen education, and create incentives for migrants to return to Mexico ♦ Includes a "Sense of Congress" that the U.S. and Mexico should enter into a partnership to examine uncompensated health care costs incurred by the U.S. due to illegal immigration by: increasing health care for the poor in Mexico, assisting Mexico in increasing health care (with an emphasis on prenatal care) along the border, facilitating the return of incapacitated workers to Mexico for care there, and helping Mexico to establish a program with the private sector to cover Mexican temporary workers in the U.S.
TITLE VI	**FAMILY UNITY AND BACKLOG REDUCTION**
Elimination of Existing Backlogs (§ 601)	♦ Provides that visas issued to "immediate relatives" of U.S. citizens will no longer be deducted from the annual worldwide limit of 480,000 family-based visas, making more visas available to the family preference categories. ♦ Allows family-based visas that were authorized but not used in prior years to be added to the 480,000 limit, and eliminates some deductions from this limit that are required by the current law. ♦ Increases the annual worldwide limit on employment-based visas from 140,000 to 290,000, and allows visa numbers not used in prior years to be made available.

PROVISION	SUMMARY
Country Limits (§ 602)	♦ Increases the limits on family-based and employment-based visas that can be charged to one country ("per country limits") from 7% to 10% of the worldwide limits, and increases the limits that can be charged to a dependent area from 2% to 5% of the total.
Allocation of Immigrant Visas (§ 603)	♦ Allocates 10% of family-based visas to the "first preference" for unmarried sons and daughters of U.S. citizens, making approximately 48,000 visas available per year, in place of the current limit of 23,400. ♦ Allocates 50% of family-based visas to the "second preference" for spouses, children, and unmarried sons and daughters of LPRs, with 77% of these visas to be used for spouses and children (the 2A preference). ♦ Allocates 10% of family visas to the "third preference" for married sons and daughters of U.S. citizens, making approximately 48,000 visas available per year, in place of the current limit of 23,400. ♦ Allocates 30% of family visas to the "fourth preference," for brothers and sisters of U.S. citizens, making approximately 144,000 visas available per year, in place of the current limit of 65,000. ♦ Allocates 20% of employment-based visas to the first employment preference, for noncitizens with extraordinary ability, outstanding professors and researchers, and multinational executives and managers. ♦ Allocates 20% of employment visas to the second preference, for noncitizens with advanced degrees or with exceptional ability. ♦ Allocates 35% of employment visas to the third preference, for skilled workers and professionals. ♦ Eliminates the current fourth employment preference, which is for "special immigrants" (an assortment of miscellaneous immigrant categories that includes religious workers, employees of the U.S. government abroad or international organizations, and juveniles dependent on the state); these immigrants would no longer be subject to numerical limits, and visas issued to them would no longer be deducted from the worldwide limit on employment visas. ♦ Allocates 5% of employment visas to *investors*, a category which is made the new fourth preference; investors currently are allocated 7.1% of employment visas, but many of these are not used. ♦ Creates a new fifth preference for unskilled labor that is not temporary or seasonal (formerly a subcategory of the third preference), and allocates 30% of employment visas to this category, increasing the number of available visas for this category from 10,000 per year to 87,000.
Relief for Children and Widows (§ 604)	♦ Expands the definition of "immediate relatives" of U.S. citizens to include children seeking to immigrate along with ("accompanying or following to join") current immediate relative spouses and parents. This would eliminate the need for these children to have separate visa petitions filed on their behalf. ♦ Allows adjustment of status by "surviving spouses, children, and parents" — immigrants who applied for adjustment, including derivative beneficiaries, may have their applications adjudicated without regard to the subsequent death of the petitioner (in immediate relative and family-based cases) or the principal beneficiary (in family, employment, and diversity visa lottery cases).
Amending the Affidavit of Support Requirement (§ 605)	♦ Lowers the level of income and resources that a sponsor must meet from 125% to 100% of federal poverty guidelines.

PROVISION	SUMMARY
Discretionary Authority (§ 606)	♦ Expands the waiver for fraud or misrepresentation to encompass false claims to U.S. citizenship and makes this waiver available to parents as well as spouses, children, sons and daughters of U.S. citizens or LPRs, where the waiver is needed to prevent extreme hardship to the citizen or LPR relative. ♦ Imposes a $2,000 fine for the expanded waiver; the current waiver would still be available without the fine.
Family Unity (§ 607)	♦ Amends the unlawful presence bars to admission to the U.S. (grounds of inadmissibility) by raising the age for which noncitizens' unlawful presence is not counted from age 18 to age 21. ♦ Provides for a waiver of the unlawful presence bars for beneficiaries of visa petitions filed on or before May 12, 2005, and requires noncitizens granted the waiver to pay a $2,000 fine.
TITLE VII	**H-5B NONIMMIGRANTS**
H-5B Nonimmigrants (§ 701)	♦ Undocumented immigrants who were present in the U.S. on the date of introduction of this bill (May 12, 2005), and who have been continuously present in the U.S. since that date, can apply for a temporary visa (H-5B) that is valid for six years. ♦ Spouses and children of undocumented immigrants who receive H-5B visas are eligible to adjust to H-5B status. Abused former spouses and children of H-5B visa-holders are eligible to adjust to H-5B status on their own, provided that the termination of the qualifying relationship was connected to domestic violence, and the former spouse or child has been battered or subjected to extreme cruelty by the H-5B spouse or parent. ♦ Applicants must show that they are "admissible," except that grounds of inadmissibility that relate to undocumented status are not applicable, and most grounds can also be waived, except for security grounds and most criminal grounds. INA sections 240B(d) (the bar to adjustment for noncitizens who fail to timely comply with a voluntary departure order) and 241(a)(5) (reinstatement of removal) would not apply to noncitizens applying for H-5B adjustment. ♦ Applicants must show a history of employment in the U.S. prior to and after the introduction of the bill. The section outlines what documents serve as evidence of employment in the U.S. Among the conclusive documents, an H-5B applicant may provide documents issued by SSA, the Internal Revenue Service, or any other federal, state, or local government agency, as well as documents from an employer, labor union, day labor center, or other organization that assists workers on employment matters. Workers may also present other documents such as bank records, business records, sworn affidavits from nonrelatives with direct knowledge of the person's work history, or remittance records. ♦ Minors (under age 21) and individuals who entered the U.S. as minors may satisfy the employment requirements for H-5B visas by full-time attendance at an institution of higher education or a secondary school. ♦ H-5B visa applicants also must clear security and law enforcement background checks. ♦ Applicants will have to pay an application fee to DHS, as well as a $1,000 fine (applicants under age 21 will not have to pay the fine) for the temporary 6-year H-5B visa. ♦ The DHS secretary shall set up an appellate authority with the Bureau of Citizenship and Immigration Services to provide for a single level of administrative appellate review of determinations pertaining to applications for H-5B visas. There also shall be judicial review in the federal courts of appeal. Applicants seeking administrative or judicial review shall not be removed from the U.S. until a final decision is rendered. ♦ The information furnished by H-5B applicants shall be confidential. The DHS secretary shall disclose such information to a recognized law enforcement entity only in connection with a criminal investigation or prosecution, or a national security investigation or prosecution, when such information is requested in writing by such an entity. Any person who knowingly uses, publishes, or permits information to be examined in violation of this section shall by fined up to $10,000.

PROVISION	SUMMARY
Adjustment of Status for H-5B Nonimmigrants (§ 702)	♦ In order to qualify for LPR status, workers will have to meet a future work requirement, clear additional security and background checks, pay another fine of $1,000 (only persons over age 21), and an application fee, provide proof that they have paid all income taxes, and satisfy English and U.S. civics requirements. ♦ Applicants who have filed for an H-5B visa shall be granted employment authorization for the period that their adjustment application is pending, shall be granted permission to travel abroad, may not be detained, determined inadmissible or deportable, or removed (deported) unless the applicant becomes ineligible for adjustment of status because of a criminal conviction. ♦ Noncitizens with H-5B status will be prohibited from changing to any other immigrant or nonimmigrant status until the end of the six year duration of the status. ♦ Noncitizens in removal proceedings will be given the opportunity to apply for H-5B adjustment, and this opportunity must also be afforded to individuals apprehended after enactment but before regulations establishing the H-5B adjustment procedure have been promulgated. Noncitizens with final orders of exclusion, deportation, or removal also may apply for H-5B adjustment, and they do not need to file a separate motion to reopen their proceedings. ♦ Spouses and children of H-5B–holders are also eligible to adjust. Abused former spouses and children of H-5B–holders who adjust or who are eligible to adjust are also eligible on their own, provided that the termination of the qualifying relationship was connected to domestic violence and the spouse or child has been battered or subjected to extreme cruelty by the H-5B spouse or parent. ♦ The confidentiality and judicial review sections provided by §701 also apply here.
Aliens Not Subject to Direct Numerical Limitations (§ 703)	♦ Immigrants who adjust from H-5B status to LPR will not be subject to numerical limitations.
Employer Protections (§ 704)	♦ Provides employers with an amnesty against any civil or criminal tax liability relating to the employment of an undocumented worker before that worker obtained work authorization under this bill. ♦ Provides employers who provide workers under this bill with the necessary documentation to establish their work history with an amnesty against any civil or criminal liability for having knowingly hired an undocumented worker.
Authorization of Appropriations (§ 705)	♦ The DHS secretary is authorized funds to carry out Title VII. ♦ Contains a "sense of Congress" that funds should be directly appropriated to DHS in order to facilitate the orderly and timely processing of applications (rather than requiring that such adjudications be funded solely through application fees).
Right to Qualified Representation (§ 801)	♦ Limits the categories of persons who are authorized to represent individuals in an immigration matter before any federal agency. The categories include: (1) attorneys; (2) law students and law graduates, if appearing under supervision and with no remuneration, and permitted to do so by the official before whom they are appearing; (3) any "reputable individual" appearing on an individual basis at the request of the immigrant, without remuneration, permitted to do so by the official before whom he or she is appearing, and who has a preexisting relationship or connection with the immigrant, unless this latter requirement is waived because adequate representation would not otherwise be available and the individual does not regularly engage in immigration practice or preparation; (4) a representative of a recognized organization who has been accredited by the BIA; (5) an accredited official of the immigrant's government (i.e., consular officer) appearing with the consent of the immigrant; and (6) an attorney licensed to practice in the immigrant's country, if the representation concerns matters outside the U.S. and the official before whom he or she is appearing allows such representation.

PROVISION	SUMMARY
TITLE VIII	**PROTECTIONS AGAINST IMMIGRATION FRAUD**
Right to Qualified Representation, cont. (§ 801)	♦ Establishes requirements for Board of Immigration Appeals (BIA) recognition of an organization, which must be a nonprofit religious, charitable, social service, or similar organization; may only make nominal charges to individuals provided assistance; and must have "at its disposal adequate knowledge, information, and experience." Also authorizes the BIA to impose a bond requirement on organizations seeking recognition. The BIA is to approve qualified individuals designated to serve as accredited representatives by recognized organizations if the individuals meet the requirements established by the BIA by regulation. Every three years, accredited representatives must certify their continuing eligibility with the BIA. ♦ Establishes "prohibited acts" subject to civil enforcement if committed by an individual who is not authorized to practice under the statute. These include (1) directly or indirectly providing or offering representation in an immigration matter for compensation or contribution; (2) advertising or soliciting representation in an immigration matter; (3) retaining any compensation for one of the above prohibited acts, whether or not any application was filed; (4) falsely representing directly or indirectly, that the individual is an attorney or supervised by or affiliated with an attorney; or (5) violating any state civil or criminal statute or regulation regarding the provision of representation. Would allow any person with reason to believe he or she has been injured to bring a civil action for enforcement. Remedies may include treble damages, injunctive relief, attorney's fees, and civil penalties of $50,000 for a first violation and $100,000 for a subsequent violation. ♦ The bill does not preempt state and local regulations, except to the extent that they impede the application of the federal requirements. It would define "representation" to include (1) "the appearance, either in person or through the preparation or filing of any brief or other document, paper, application, or petition on behalf of another person or client, before any Federal agency or officer;" and (2) "the study of the facts of a case and the applicable laws, coupled with the giving of advice and auxiliary activities, including the incidental preparation of papers."
TITLE VIII	**PROTECTIONS AGAINST IMMIGRATION FRAUD**
Protection of Witness Testimony (§ 802)	♦ Expands nonimmigrant "U" visa status to include victims of fraud committed by persons not authorized to engage in immigration representation, where the victim has suffered financial, physical, or mental harm. ♦ Increases the number of noncitizens who may be granted "U" status in a fiscal year from 10,000 to 15,000.
TITLE IX	**CIVICS INTEGRATION**
Funding for the Office of Citizenship (§ 901)	♦ Establishes the "United States Citizenship Foundation," a public-private foundation aimed at supporting the Office of Citizenship of U.S. Citizenship and Immigration Services. The Office of Citizenship promotes language and civics training of immigrants seeking naturalize.
Civics Integration Grant Program (§ 902)	♦ Directs DHS to establish a competitive grant program to fund programs that promote knowledge of civics and English as a second language. ♦ Authorizes appropriation of funds needed to carry forth the grant program.

PROVISION	SUMMARY
TITLE X	**PROMOTING ACCESS TO HEALTH CARE**
Federal Reimbursement of Emergency Health Services Furnished to Undocumented Aliens (§ 1001)	♦ Clarifies that health care providers may claim reimbursement for emergency treatment of uninsured H-5A visa–holders and H-5B visa–holders under Section 1011 of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA). Section 1011 provides limited funding to health care providers to help defray the costs of emergency care to certain uninsured immigrants who are ineligible for public health benefits. ♦ Extends funding authorization under Section 1011, currently set to expire in 2008, for an additional three years, until 2011.
Prohibition against Offset of Certain Medicare and Medicaid Payments (§ 1002)	♦ Clarifies that Section 1011 payments shall not be offset by a reduction in federal Medicaid funding to "disproportionate share hospitals" for the treatment of low-income patients.
Prohibition Against Discrimination (§ 1003)	♦ Prohibits government agencies from discriminating on the basis of employment in a hospital versus a nonhospital against J-1 visa–holders who seek a waiver of the 2-year foreign residency requirement.
Binational Public Health Infrastructure and Health Insurance (§ 1004)	♦ Directs the Dept. of Health and Human Services to contract with the Institute of Medicine of the National Academies to study and issue a report recommending ways to expand or improve binational public health infrastructure and health insurance efforts.
TITLE XI	**MISCELLANEOUS**
Submission to Congress of Information Regarding H-5A Nonimmigrants (§ 1101)	♦ Requires the secretary of State and secretary of DHS to maintain an accurate count of the number of aliens who are issued H-5A visas or otherwise given H-5A status. ♦ Beginning with the first fiscal year after regulations are issued to implement this Act, the secretary of State and secretary of DHS must submit quarterly reports to the Senate and House Judiciary committees on the number of visas issued during the preceding 3-month period. Additionally, annual reports must be submitted that contain the following information: countries of origin, occupation, geographic area of employment in the U.S., and compensation. Information will be compiled based on data reported by employers to the EECS.
H-5B Nonimmigrant Petitioner Account (§ 1102)	♦ Creates a general fund of the Treasury, which is funded by fees and fines collected by the program. Among other things, the Nonimmigrant Petitioner Account will fund the following activities: (1) not more than 1% of the funds will promote public awareness about the H-5B visa program, to protect migrants from fraud, and to combat the unauthorized practice of law under this Act; and (2) 15% will be available to DOL to enforce labor standards in the geographical and occupational areas in which H-5A workers work.
Anti-Discrimination Protections (§ 1103)	♦ Expands the types of immigrants who are protected from national origin and citizenship status to include all LPR's (not just those who apply for naturalization within 6 months of becoming eligible to do so), workers under the Special Agricultural Worker program, immigrants granted temporary residence under or other temporary residents under 245(a)(1), refugees, asylees, and workers granted the new H-5A or H-5B created by this bill.

ABBREVIATIONS: BCBP: Bureau of Customs and Border Protection • DHS: Department of Homeland Security • DOL: Department of Labor • EECS: Employment Eligibility Confirmation System • FLSA: Fair Labor Standards Act • ICE: Bureau of Immigration and Customs Enforcement • LPR: Lawful Permanent Resident • SSA: Social Security Administration

PROVISION	SUMMARY
Women and Children at Risk of Harm (§ 1104)	♦ Expands the definition of "special immigrant" to include any immigrant outside of the U.S. who is: (1) a minor under 18 who does not have a parent or legal guardian who can provide adequate care, who faces a credible fear of harm related to his or her age, who lacks adequate protection from such harm, and for whom it has been determined to be in his or her best interest to be admitted to the U.S.; and (2) a woman who has a credible fear of harm related to her sex and lacks adequate protection from such harm. ♦ To be eligible, applicants must be referred to a consular, immigration, or other official by a U.S. government agency, an international organization, or a recognized nongovernmental entity designated by the secretary of State. ♦ Prohibits the parent or adopted parent of any child provided special immigrant status from being provided any status under the Immigration and Nationality Act ♦ Prohibits an alien granted special immigrant status from petitioning for a spouse who was represented as missing, deceased, or the source of harm at the time of the alien's application. The secretary of DHS can waive this requirement if the alien can demonstrate that her representations of the spouse were bona fide. ♦ Applicants granted special immigrant status may petition for a sibling or child under the age of 18. ♦ Applicants granted special immigrant status shall be treated as refugees solely for the purposes of refugee resettlement assistance. ♦ Applicants under this section are not subject to the public charge ground of inadmissibility or labor certification and visa requirements. The DHS secretary may waive other grounds of inadmissibility except for those pertaining to controlled substance traffickers, security, and terrorism. ♦ Age is determined by age on the date of referral to a consular officer. ♦ Application fees under this section will be waived for a special immigrant visa, and immigrant visas under this section will not be subject to numerical limitations. Applicants will be provided an expedited adjudication process in which status will be adjudicated not later than 45 days after referral to a consular official. ♦ Those granted special immigrant status may apply adjustment of status to permanent residence not later than 1 year after arrival in the U.S. ♦ All applicants will be subject to criminal, security, and other background checks before being granted special immigrant status, and must be fingerprinted and submit any other biometric data required by the secretary of DHS upon entry to the U.S. All databases containing fingerprints must be searched to determine whether the alien is ineligible to adjust to permanent residence on criminal, security or related grounds. ♦ Immigrants under this section who are determined ineligible for adjustment of status may appeal the decision through the Administrative Appeals Office of the Bureau of Citizenship and Immigration Services. Judicial review of decisions by the AAO is subject to the limitations contained in section 242(a)(2)(B) of the Immigration and Nationality Act. ♦ No later than 1 year after the enactment of this Act, the secretary of DHS shall report to the Senate and House Judiciary committees the following: (1) data related to implementation of this section; (2) data regarding the number of placements of women and children who face credible fear of harm; and (3) any other information that the secretary of DHS deems appropriate. ♦ Funds are authorized to carry out this section.

PROVISION	SUMMARY
Expansion of "S" Visa (§ 1105)	♦ Expands "S" visa availability by providing eligibility to a person (1) whom the DHS secretary and the secretary of State, in consultation with the director of Central Intelligence, determine has information regarding governments or organizations with respect to weapons of mass destruction and delivery systems, if they are at risk of developing or transferring the weapons or systems, and (2) who is willing to supply or has supplied such information to the U.S. government. ♦ If the DHS secretary (in cases involving a criminal organization or enterprise) or the DHS secretary and secretary of State (in cases involving terrorism or weapons of mass destruction) consider it appropriate, the spouse, children and parents of the person may accompany or follow to join him/her. ♦ Increases the annual limit of persons who may be granted an "S" visa from the current 250 to 3,500 persons.
Volunteers (§ 1106)	♦ Exempts certain religious denominations, affiliated religious organizations, and their agents or officers from criminal liability for harboring an undocumented immigrant if the immigrant is a volunteer with the denomination or organization who is not compensated as an employee (room, board, travel and other basic living expenses do not count as "compensation").

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Most State Proposals to Restrict Benefits for Immigrants failed in 2005

Most State Proposals to Restrict Benefits for Immigrants Failed in 2005

MEASURES TARGETING IMMIGRANTS PROMISED FOR NEXT YEAR

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■ Introduction

Buoyed by the passage of Arizona's Proposition 200 in 2004, restrictionist groups actively lobbied other states to adopt similar measures targeting immigrants. The Arizona initiative requires employees of state and local agencies to verify the immigration status of benefit applicants, and to report any "discovered" immigration law violations to federal immigration authorities, making the failure to file such a report a criminal offense. It also mandates that persons registering or seeking to vote submit specific documents as evidence of U.S. citizenship. During the 2005 state legislative session, approximately 80 bills seeking to restrict immigrants' access to services or requiring benefit agencies to report applicants to federal immigration authorities were introduced in more than 20 states.[1] Measures proposed in at least seven states copied some of Proposition 200's provisions directly.[2]

The bills ranged from those denying all state or local public benefits to certain immigrants, to those restricting specific services such as financial aid, tuition waivers, adult basic education, literacy, instruction in English as a second language (ESL), workers' compensation benefits, or adoption assistance. Some required local police, counties, social service agencies, or private organizations receiving state funds to cooperate with federal immigration authorities. Other measures required that persons seeking services or registering to vote present specific documents. One added "illegal immigration" to a list of state emergencies, while another proposed to establish a state border police agency.

An examination of these efforts reveals that the bills failed to garner significant support and, in some states, faced strong opposition by health care providers and by business, faith-based, labor, community-based, antipoverty, anti–domestic violence, civil rights, and immigrant rights groups. Republicans and Democrats alike distanced themselves from the measures, which were perceived by some as mean-spirited, divisive, or a political liability. Almost all the bills either stalled in legislative committees or were defeated. The few that did pass were narrowed significantly during the course of the legislative session and are likely to have little formal legal effect. Restrictionist groups have not given up, however, and are expected to pursue similar legislation or initiatives in several states during the coming year.

■ Narrow Legal Effect

One of the only such bills to secure a governor's signature this year was a Virginia measure prohibiting undocumented immigrant adults from securing certain state or local benefits.[3] Virginia's Governor Warner blunted criticism of his signature by explaining that, in his opin-

[1] *See* accompanying table, "2005 State Legislation Restricting Benefits for Immigrants or Promoting State and Local Enforcement of Immigration Laws" (National Immigration Law Center, Nov. 2005). The table does not cover bills aimed only at restricting access to driver's licenses or in-state tuition for immigrants, or those affecting immigrants' rights in the workplace. For more information on these issues, *see* NILC's website at www.nilc.org, especially its "Employment Issues," "Driver's Licenses," and "DREAM Act" pages.

[2] Bills or initiatives introduced in Alabama, Arkansas, California, Georgia, North Carolina, Tennessee, and Washington mirrored some or all of Proposition 200's provisions.

[3] *See also* discussion of Maryland governor's actions, under "States Restore, Preserve, and Expand Access to Care for Immigrants," below.

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ion, the new law did not change existing state practice. He noted that the final bill was much less restrictive than the one originally introduced.[4] Similarly, Arizona's attorney general determined that Proposition 200's verification and reporting requirements applied only to five programs, from which undocumented immigrants already were excluded.[5] During the 2005 session, Arizona's governor vetoed a bill that would have denied immigrants' access to a broader array of services. Several other restrictive measures in Arizona died before reaching the governor's desk.

■ Harmful Practical Effect

Despite the narrow legal effect of the measures that became law and the failure of the vast majority of similar bills to pass, the debate surrounding the bills and the threat of new bills or initiatives at once reflected and reinforced a climate of hostility toward immigrants. The impact in Arizona was palpable. After the passage of Proposition 200, many immigrants and their U.S. citizen family members were deterred from seeking services for which they remained eligible. The media reported drops in visits to health clinics and in participation in literacy training, nutrition assistance, and health programs, as well as accounts of domestic violence victims afraid to report abuse and parents confused about whether to keep their children home from school.[6]

Some proponents appeared to welcome indications that Proposition 200 deterred immigrant parents from seeking services that were not covered by the initiative, such as primary education and WIC, the supplemental nutrition program for women, infants, and children. Kathy McKee of Protect Arizona Now, the group that crafted the initiative, suggested that undocumented immigrants have only themselves to blame for their fear: "If people are in this country illegally, they're not entitled to a fear-free life. They should fear being deported."[7]

The harm extended far beyond the undocumented immigrants that the initiative purported to target, sowing fear and confusion in families that include immigrants who are lawfully present in the U.S.[8] and/or U.S. citizens. An Arizona state representative described the turmoil experienced by his constituents: "A fear factor has set in. People tell me that they are legal immigrants and their children are citizens, but they are afraid to apply for the Arizona Health Care Cost Containment System." He continued, "They ask me: 'Should I go to court on a traffic ticket?' They say they have witnessed a crime and are afraid to report it."[9]

Arizona's experience is similar to California's after the passage of Proposition 187. The California initiative, approved in 1994, would have denied access to public education and a broad array of services to certain immigrants and would have required state and local agencies to report individuals suspected of being undocumented to federal immigration authorities. Most of Proposition 187 was invalidated by federal courts as unconstitutional and never implemented. However, the harm and political fallout stemming from the initiative lingers today and contributes to the confusion and fear that prevent families from securing services. After the initiative passed, there was a documented rise in hate crimes, as well as harm resulting from a reluctance by immigrants to approach government agencies to report crimes, seek critical services, or otherwise participate in protecting public health and safety.[10]

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[4] C.L. Jenkins, "Warner Signs Limits on Immigrant Benefits: Virginia to Require Verification of Legal Status to Receive Non-Emergency Aid," *Washington Post*, Mar. 30, 2005.

[5] State of Arizona Office of the Attorney General, "State and Local Public Benefits Subject to Proposition 200," Opinion No. 104-010 (R04-036) (Nov. 12, 2004) (finding that the initiative applies only to the General Assistance, Sight Conservation, "Neighbors Helping Neighbors," Utility Repair, Replacement and Deposit, and Supplemental Payment Programs). An attempt to broaden the scope of this initiative is pending in the Arizona courts. Yes on Prop. 200 v. Napolitano, CA-CV 05-0235 (Ariz. Ct. App., filed Apr. 28, 2005). The initiative did not alter immigrants' eligibility for benefits but instead introduced verification and reporting requirements. *See also* "9th Circuit Dismisses Challenge to Arizona's Prop. 200 and Vacates District Court Ruling Denying Injunction," *Immigrants' Rights Update*, Oct. 5, 2005, available at: www.nilc.org/immspbs/vr/verifreptg009.htm.

[6] *See, e.g.*, Mary Vandeveire, "Prop 200 Confusion Being Lamented, Participation Drop Seen in Services Not Affected by New Law," *Arizona Daily Star* (Tucson ed.), April 4, 2005; Elvia Diaz and Robert Sherwood, "Prop. 200's Effect Minimal: Political Fallout May Loom Large in '06 Races," *Arizona Republic*, June 5, 2005 (immigrants are missing medical appointments and are delivering babies elsewhere).

[7] *Arizona Daily Star, supra* note 6.

[8] In this article, the term "lawfully present" refers to persons who are "lawfully present in the U.S."

[9] John Turner Gilliland, "Anti-Immigration Initiative Takes Effect in Arizona," *CNSNEWS.com*, Dec. 24, 2004.

[10] *See, e.g.*, Fenton, Catalano and Hargreaves, "Effect of Proposition 187 on Mental Health Service Use in California: A Case Study," *Health Affairs*, Vol. 15, No. 1 (1996); Fenton, Moss, Khalil, Ghattas, and Asch, "Effect of California's Proposition 187 on the Use of Primary Care Clinics," *Western Journal of Medicine*, Vol. 166, No. 1 (Jan. 1997); Coalition for Humane Immigrant Rights of Los Angeles,

A legislator's attempt to reintroduce part of Proposition 187 was killed swiftly in the California legislature this year, as were several other measures that proposed to deny services to immigrants or promote cooperation with federal immigration authorities. Similarly, Republican Governor Mike Huckabee of Arkansas this year publicly denounced a bill similar to Proposition 200, calling it "inflammatory . . . race-baiting and demagoguery" and speculating that the measure could deter overseas corporations from bringing new business to Arkansas.[11]

Even the largely symbolic bills were intended to send a message, not only to community members but also to federal policymakers, in the midst of the debate on federal immigration reform. The state and local campaigns such as Protect Arizona Now (PAN) purport to be home-grown but were funded heavily by national groups such as the Federation for American Immigration Reform (FAIR), Americans for Better Immigration, Americans for Immigration Control, Popstop, Inc. (of Maryland), and Population-Environment Balance, which hope to build on anti-immigrant sentiment at the state and local levels to fuel a national restrictionist agenda.[12]

These anti-immigrant groups, testing the waters in various states, also hoped that the immigrant issues would help to advance or defeat candidates in state and local elections. Governor Warner of Virginia acknowledged that the bill he signed, rather than addressing any concrete problem, was designed to provide an issue for legislators to focus on in the upcoming state elections. Governor Napolitano of Arizona, feeling pressured to defend herself against accusations that she was soft on illegal immigration, pointed to her signature on a bill denying funding to day laborer sites.[13] Republicans and Democrats agree that the immigration issue will provide fodder for upcoming elections, either by energizing Latino voters or by drawing out those who are uncomfortable with current immigration or demographic trends.

■ State Advocacy Highlights

During the past year, advocates worked in broad coalitions to defeat measures targeting immigrants, underscoring the value of providing preventive care and critical services and highlighting the contributions of immigrants to the economy and workforce.

¶ A coalition of health care providers, labor, faith-based, civil rights, and immigrant rights groups in **Colorado** defeated a bill that would have denied services to undocumented immigrants and required agencies to maintain records of immigration documents. An initiative that would have denied nonemergency services to undocumented immigrants failed to attract enough support to qualify for the 2004 ballot. However, proponents plan to file an identical initiative, aiming for the 2006 ballot.

¶ Two Proposition 200 look-alike bills failed in **Georgia** this session, one because it could not garner the two-thirds vote needed to amend the state's constitution. Advocates expect that a version of these bills will be reintroduced next session. State Senate Republican leaders reportedly have designated these measures as "top priority" for the 2006 session.[14]

¶ In response to vociferous objections from businesses, health care providers, and community action organizations, **Idaho** legislators tabled a bill that would have denied services under the county indigent medical program to undocumented immigrants, required the county to pay for transportation of undocumented patients to their home countries, and held employers liable for the cost of their care.

¶ All of the anti-immigrant legislation introduced in **Maryland** this year was withdrawn, defeated in committee, or was not voted on during this session. A broad

"Hate Unleashed: Los Angeles in the Aftermath of 187" (1995); Kenneth B. Noble, "Attacks against Asian-Americans on the Rise, Especially in California," *New York Times*, Dec. 13, 1995; *see also* Tanya Broder and Clara Luz Navarro, "A Street Without an Exit: Excerpts from the Lives of Latinas in Post-187 California," *Hastings Women's Law Journal*, Summer 1996.

[11] "Huckabee Blasts Immigrant Bill as 'Race-Baiting,'" *Associated Press*, Jan. 28, 2005; "Governor Says Anti-Illegals Measure Could Scare off Companies Like Toyota," *Associated Press*, Feb. 3, 2005.

[12] *See* Tom Barry, "Restrictionism Resurgent in Post 9/11 Politics: Protect America Now" (International Relations Center (IRC), Dec. 3, 2004), available at www.irc-online.org/content/710. *See also* Tom Barry, "Immigration Debate: Politics, Ideologies of Anti-Immigration Forces" (IRC, June 17, 2005), available at www.irc-online.org/content/652 (describing origins of and relationships among national anti-immigrant groups). A list of major contributors to PAN can be found at www.pan2004.com/funding.htm. *See also* Center for New Community, "Federation for American Immigration Reform (FAIR): Center for New Community Special Report" (Nov. 2004), available at www.newcomm.org/fair2004.pdf (details links between FAIR and white supremacist organizations and describes some of the group's state and local work).

[13] Elvia Diaz and Robert Sherwood, "Prop. 200's Effect Minimal: Political Fallout May Loom Large in '06 Races," *Arizona Republic*, June 5, 2005.

[14] Dick Pettys, "Conservatives Campaign to Block Benefits for Illegal Immigrants," *Associated Press*, Oct. 17, 2005.

coalition of faith-based, civil rights, immigrant community, education, anti-domestic violence, and workers' rights groups, health care providers, and government staff lodged substantial opposition to these bills. The groups are monitoring a rise in hate crimes against immigrants in Maryland and preparing for similar legislation expected in the upcoming session, such as a bill that would deny workers' compensation coverage to undocumented workers and another that would outlaw the translation of Baltimore County documents into languages other than English. Unfortunately, as detailed below, Maryland's governor cut funding for lawfully present immigrant children and pregnant women who had been covered under a state medical program.

¶ Advocates in **Tennessee** defeated a bill that mirrored Arizona's Proposition 200. They worked hard to prevent a slew of anti-immigrant legislation from passing this year, including renewed attempts to restrict access to driver's licenses and public benefits. Advocates also introduced positive legislation, including a bill approved by the Senate Education Committee that would increase funding for the state's English Language Learning Program, which provides instruction in public schools to students whose first language is not English. The bill likely will continue to move next session. Advocates also plan to embark on a "Welcoming Tennessee" initiative, an education campaign aimed at highlighting the benefits that immigrants bring to the state. The initiative is modeled on a successful campaign in Iowa.[15]

¶ All of the bills targeting immigrants in **California** were defeated this year as well. Most California legislators, cognizant of the political damage from Proposition 187 and now more sensitive to the state's changing demographics, distanced themselves from measures perceived as discriminatory.[16] Advocates promoted positive messages about immigrants and their contributions[17] and are moving legislation to facilitate naturalization and civic participation. They also are gearing up to address proposed initiatives and anti-immigrant activity at the state and local levels.

¶ On Nov. 19, 2005, the governor of **Illinois** signed a "New Americans Executive Order," creating an "Office of New Americans Policy and Advocacy." Under the order, a council of state and national experts will meet to develop recommendations on how to integrate immigrants fully into the state's economic and civic life, including policies on English acquisition, citizenship, education, health care, human services, security, entrepreneurship, workforce development, home ownership and housing. An interdepartmental task force of state agencies also will examine how to address the needs of diverse immigrant groups in Illinois. Finally, the new office will analyze federal immigration law and policy changes, advise the governor on how the state should respond, and make contributions to the national discourse on immigrant integration policy.

■ Bills and Initiatives Promised for Next Session

Although across the nation at least 75 bills aimed at restricting services for immigrants were defeated last session, sponsors in several states, including Alabama, Arizona, Arkansas, California, Colorado, Georgia, and Tennessee, vowed to reintroduce them or bring them to the voters as initiatives. Such initiatives are pending or circulating in Arizona, California, Colorado, and Washington. In states and localities across the country, the debate on immigrant-related measures is likely to play a prominent role in the 2006 elections.

The November 2006 general election ballot in Arizona, for example, will include a proposed state constitutional amendment that would deny bail to undocumented persons who are charged with a felony. Proposition 187 proponents in California have tried for several years to reignite the initiative in various forms, most recently taking advantage of the debate on access to driver's licenses for immigrants. One such initiative failed to qualify for the ballot earlier this year. However, another initiative currently circulating for signatures would establish a "California Border Police" agency charged with assisting federal agencies in enforcing immigration laws. A third initiative, submitted to the California attorney general but not yet circulating, would deny a broad array of services to certain immigrants, prevent them from securing driver's licenses or in-state tuition for postsecondary education (e.g., at community or state colleges), and require proof of U.S. citizenship for persons applying or registering to vote.

[15] The Iowa campaign, sponsored by the Center for New Community, used outreach, leadership training, and public education to build support for immigrants in various sectors. Caucuses across Iowa adopted resolutions welcoming immigrants and denouncing anti-immigrant groups that had come to Iowa from out of state.

[16] The political fallout from Proposition 187 left an indelible mark on the state and, to some extent, the nation. Former Governor Pete Wilson, who had campaigned heavily on the immigration issue, came to be viewed as anti-Latino and inspired a growing demographic and political force to register as Democrats in record numbers.

[17] *See, e.g.*, California Immigrant Welfare Collaborative, "Looking Forward: Immigrant Contributions to the Golden State" (2005), available at www.caimmigrant.org/source/Immigrant_contribution.pdf.

In Washington State, an initiative modeled on Proposition 200 is circulating for signatures. If the measure is certified, it will be submitted to the state legislature in January 2006.[18] The main proponent of the initiative, Martin Ringhofer, gained notoriety when he challenged the credentials of voters during the 2004 governor's race, based on their "foreign-sounding" names. Both Republicans and Democrats condemned Ringhofer's efforts to disqualify voters.[19] Although the initiative does not appear to have significant support at this time, advocates are treating the threat seriously.

■ States Restore, Preserve, and Expand Access to Care for Immigrants

As the restrictive measures were debated and in most cases defeated, many states preserved, restored or expanded access to services for immigrants this year, focusing in particular on preventive health care coverage. Legislators and governors in many of these states recognized that investing in preventive care for all community members is a cost-effective public health policy.[20]

The Colorado Legislature, for example, restored Medicaid and state medical coverage to the lawfully present immigrants whose eligibility would have been terminated by a 2003 law. Litigation challenging these cuts afforded additional time for the legislature to reconsider, and no terminations were implemented before the new law restored coverage.[21]

Washington State restored health coverage through a state-funded Medicaid look-alike program to all children in families earning less than 100 percent of the federal poverty level, regardless of their immigration status. In 2002, the state had transferred children and some parents who were ineligible for federal Medicaid to a "Basic Health" program, with premiums, co-pays and a more restrictive scope of services than Medicaid. Policymakers discovered, however, that many children lost coverage and access to care, and that the administrative expenses, increased workload, and cost-shifts of this move outweighed any benefits or savings.[22] The legislature and governor opted to restore the Medicaid look-alike program for children, effective January 2006. Several counties and states, including New York, Massachusetts, Rhode Island, and, to a more limited extent, Washington, DC, already offer coverage to low-income children, without discriminating based on immigration status. Other states and counties, including California, are considering similar proposals.

On Nov. 15, 2005, Governor Blagojevich of Illinois signed a measure that will allow all children in the state to obtain health insurance, regardless of their immigration status. The Illinois program, to be implemented on July 1, 2006, will require copayments and premiums, depending on a family's income. To finance this program, 1.7 million children currently enrolled in the state's KidCare, FamilyCare and Medicaid programs will be shifted to a system in which recipients choose a primary doctor to coordinate their care and referrals to specialists and hospitals.[23]

[18] The legislature could adopt the initiative as proposed or, if it rejects or refuses to act on it, the measure would be placed on the ballot in the following election. Alternatively, the legislature can approve an amended version, in which case both the original and the amended version would be placed on the ballot.

[19] "A Nasty Turn in Election Challenge," *Seattle Times*, April 5, 2005.

[20] *See* NILC, "Comprehensive Health Care for Immigrants: A Sound Strategy for Fiscal and Public Health" (2004), available at www.nilc.org/immspbs/health/Issue_Briefs/comphealthcare_0404.pdf. *See also* Mohanty, Woolhandler, Himmelstein, Pati, Carrasquillo and Bor, "Health Care Expenditures of Immigrants in the United States: A Nationally Representative Analysis," *American Journal of Public Health*, Vol. 95, No. 8 (Aug. 2005), at 1431. The report found that immigrants in the U.S. used health care at a lower rate, and account for a disproportionately lower portion of health care spending, than U.S. citizens. The report noted that although immigrant children had a lower average number of emergency room visits, their costs per visit were higher, suggesting that immigrant children delayed seeking care until their conditions became more serious and costly.

[21] *See* "Colorado Legislature Votes to Restore Medicaid Eligibility for Immigrants," *Immigrants' Rights Update*, Feb. 10, 2005, available at www.nilc.org/immspbs/health/health032.htm.

[22] *See, e.g.*, Mark Gardner and Janet Varon, "Moving Immigrants from a Medicaid Look-Alike Program to Basic Health in Washington State: Early Observations" (Kaiser Commission on Medicaid and the Uninsured, May 12, 2004), available at www.kff.org/medicaid/7079a.cfm; Children's Alliance, "Condition Critical: Washington's Curable Children's Health Crisis" (Dec. 2004), available at www.childrensalliance.org/publications/reports.cfm.

[23] Monica Davey, "Illinois Law Offers Coverage for Uninsured Children," *New York Times*, Nov. 16, 2005; Kaiser Family Foundation, "Illinois Gov. Blagojevich Signs Legislation to Expand Children's Health Insurance," *Kaiser Daily Health Policy Report*, Nov. 16, 2005.

New Jersey began to offer coverage to "qualified" immigrant[24] parents through the NJ Family Care program, effective Sept. 1, 2005. Illinois created a new program, providing subsistence income to refugee and other "humanitarian" immigrant seniors and persons with disabilities who are ineligible for federal Supplemental Security Income (SSI). Advocates in New York secured a court order directing the state to provide cash assistance to lawfully present immigrant seniors and persons with disabilities who are ineligible for federal SSI.[25] And California extended basic dental care services to all pregnant women served under the state's Medicaid program, regardless of their immigration status.

All told, more than 30 states continue to provide state-funded services to some or all of their immigrant residents who are ineligible for federal Temporary Assistance for Needy Families (TANF), SSI, food stamps, Medicaid, or the State Children's Health Insurance Program (SCHIP).[26] These programs for immigrants, although not generally comprehensive, have been critical in helping to fill some of the gaps created by the 1996 federal welfare law, which severely limited immigrants' eligibility for federal safety-net programs. During the past several years, however, some of these state programs have been eliminated or threatened by budget pressures. Advocates in Massachusetts, where coverage for some immigrants was terminated in the previous year, this year were successful in preserving medical coverage for immigrant seniors and immigrants with disabilities.[27]

By contrast, Maryland's governor recently used his budget authority to cut health coverage for "qualified" immigrant children and pregnant women who are ineligible for federal Medicaid due to the five-year bar for recent entrants. Responding to public outcry, the governor amended the budget to maintain coverage for those currently receiving prenatal care. While welcomed, this improvement left 3,000 immigrant children without coverage. Community-based organizations in Maryland are working to restore coverage for these immigrants during the next legislative session and have already generated positive press on the issue.[28] Advocates also have filed a legal challenge to these cuts.[29]

Despite the enactment of replacement programs in some states, participation by low-income immigrant families in critical safety-net programs plunged precipitously after the passage of the 1996 welfare law and, contrary to popular belief, remains lower than that of low-income families whose members are U.S. citizens.[30] Much more work will be needed to ensure not only that

[24] "Qualified" immigrants, as defined by the 1996 federal welfare law, include lawful permanent residents, refugees, persons granted asylum or withholding of deportation/removal, conditional entrants, persons paroled into the U.S. for at least one year, Cuban and Haitian entrants, and certain abused immigrants. 8 USC § 1641(b) and (c).

[25] Khrapunskiy v. Doar, No. 404175104 (NY Sup. Ct., Aug. 11, 2005) (state's failure to provide assistance to lawfully present seniors and persons with disabilities under its "Additional State Payments" program violates Article 17 of the state constitution, which requires the state to aid and support the needy, as well as the Equal Protection clauses of the state and U.S. constitutions). The lower court's order likely will be placed on hold (or "stayed") while the state appeals.

[26] *See* NILC tables on state-funded Medicaid, SCHIP, TANF, food stamp and SSI replacement programs, updated from NILC's, *Guide to Immigrant Eligibility for Federal Programs*, available at www.nilc.org/pubs/Guide_update.htm.

[27] Legislators in Massachusetts also hope to restore medical services for the lawfully present immigrants who lost coverage in 2003. "Call to Reinstate MassHealth for Legal Immigrants," *Sentinel & Enterprise*, Sept. 22, 2005.

[28] *See, e.g.*, "Unhealthy Thinking," *Washington Post* editorial, Oct. 9, 2005; "May We Have Some More?" *Baltimore Sun*, Oct. 6, 2005.

[29] Flor P. v. Ehrlich (Montgomery County Circuit Ct, filed Oct. 26, 2005) (alleging that terminating coverage for lawfully present immigrants violates the Equal Protection clause of the Maryland Declaration of Rights).

[30] *See, e.g.*, Michael Fix and Jeffrey Passel, "The Scope and Impact of Welfare Reform's Immigrant Provisions" (Urban Institute, Jan. 15, 2002), available at www.urban.org/urlprint.cfm?ID=7522; Leighton Ku, Shawn Fremstad, and Mathhew Broaddus, "Noncitizens' Use of Public Benefits Has Declined Since 1996: Recent Report Paints Misleading Picture of Impact of Eligibility Restrictions on Immigrant Families" (Center on Budget and Policy Priorities, April 21, 2003), available at www.cbpp.org/4-14-03wel.pdf; Randolph Capps, Michael E. Fix, Jason Ost, Jane Reardon-Anderson, and Jeffrey S. Passel, "The Health and Well-Being of Young Children of Immigrants" (Urban Institute, Feb. 2005), available at www.urban.org/Template.cfm?NavMenuID=24&template=/TaggedContent/ViewPublication.cfm&PublicationID=9161; Douglas S. Massey, "Five Myths About Immigration: Common Misconceptions Underlying U.S. Border-Enforcement Policy," *Immigration Policy in Focus*, Aug. 2005, available at www.ailf.org/ipc/policy_reports_2005_fivemyths.htm ("While 66 percent of Mexican immigrants report the withholding of Social Security taxes from their paychecks and 62 percent say that employers withhold income taxes, only 10 percent say they have ever sent a child to U.S. public schools, 7 percent indicate they have received Supplemental Security Income, and 5 percent or less report ever using food stamps, welfare, or unemployment compensation.").

immigrants are eligible for services, but that they feel safe in securing them as well.

■ Conclusion

Despite an upsurge in anti-immigrant activity, state and local lawmakers and their constituents continue to recognize that investing in services for all community members makes fiscal, public health, and public policy sense. This past legislative session, most proposals to deny services to immigrants were rejected. Even when restrictive measures fail, however, the message sent to immigrant communities can be devastating. Moreover, bills and initiatives targeting immigrants are certain to resurface in the coming year and will be used to fuel divisions between communities. Advocates will need to develop strategies to ensure that the climate created by these initiatives does not impose new and unforeseen hardships on immigrants and their U.S. citizen family members.

With this goal in mind, advocates have launched affirmative campaigns, such as naturalization and civic participation initiatives, aimed at highlighting the contributions of immigrants and promoting policies that take advantage of their skills, facilitate English and vocational English capacity, improve language access policies, and help ensure that families can secure critical services that allow them to remain healthy and productive. They are identifying new allies, and participating in broader coalitions, to pursue policies that boost low-income communities generally, thwarting efforts to divide communities.

The debate on immigrant-related measures at the state and local level arises, in part, from a lack of an effective, cohesive federal policy to incorporate immigrants into U.S. society.

There is a widespread recognition that the federal immigration system is deeply flawed, separating family members from one another for extended periods and providing no legal pathway for millions of essential workers to participate in an economy that demands their labor. The result is a growing population of long-term undocumented workers. Some advocates of restrictive measures believe that denying access to services or to the basic documents that make it possible to perform daily activities in a normal manner — and generally making life more difficult for families with members who are undocumented — will force them to "self-deport." But the notion that restrictive measures drive immigrants back to their countries of origin is belied by the facts.[31] While the restrictive measures and proposals may have succeeded in instilling fear and uncertainty within immigrant communities, they have done little or nothing to affect immigration patterns. Ironically, the threatening proposals have the counterproductive effect of inhibiting integration into communities. "As immigration restrictionists advance their agenda," Tom Barry notes, "the very act of assimilation that they demand of immigrants will become increasingly impossible."[32]

Frustrated by the lack of a coherent federal policy, state and local governments have taken steps, both positive and negative, to address the presence and needs of immigrants in both the new "gateway" states and in more established immigrant communities.[33] Government commissions and research institutions increasingly have recognized that immigrant workers are essential in supporting our economy, tax base, and Social Security system.[34] Federal, state and local policies will need to

[31] Indeed, Arizona voters did not believe that Proposition 200 would reduce the number of undocumented immigrants in the state or even make Arizona less appealing to immigrants. "What are Arizona Voters Thinking About Illegal Immigration," *thinkAZ*, Oct. 2005, available at www.thinkaz.org/documents/WhatareArizonaVotersThinkingaboutIllegalImmigration.pdf. And even if such a plan could be effective, more than half of the Republicans surveyed by the Manhattan Institute would oppose a policy making life so unpleasant that undocumented immigrants would be forced to leave the U.S. Manhattan Institute, "A National Survey of Republican Attitudes" (survey conducted Oct. 2-5, 2005), available at www.manhattan-institute.org/ppt/Tarrance_Immigration_Poll_files/frame.htm.

[32] Tom Barry, "Restrictionism Resurgent in Post 9/11 Politics: Protect America Now," *supra* note 12.

[33] *See, e.g.,* Paul Vitello, "As Illegal Workers Hit Suburbs, Politicians Scramble to Respond," *New York Times*, Oct. 6, 2005; Mark K. Matthews, "Immigration Bedevils State Lawmakers," *Stateline.org*, Sept. 2, 2005.

[34] *See, e.g., Economic Report of the President*, Washington, DC: U.S. Govt. Printing Office (2005), at 93–116; Little Hoover Commission, "We the People: Helping Newcomers Become Californians" (June 2002), available at www.lhc.ca.gov/lhcdir/report166.html (bipartisan commission recognizes immigrants' vital role in the state's workforce and economy, and recommends that the state enact policies to encourage full participation by immigrants of all statuses); Stuart Anderson, "The Contribution of Legal Immigration to the Social Security System," National Foundation for American Policy (Feb. 2005), available at www.nfap.net/researchactivities/studies/SocialSecurityStudy2005Revised.pdf (over the next 75 years, new legal immigrants will provide a net benefit of approximately $611 billion in present value to the Social Security system; a reduction in legal immigration could devastate the system over time); Eduardo Porter, "Illegal Immigrants Are Bolstering Social Security with Billions," *New York Times*, Apr. 5, 2005 (Social Security Administration estimates that immigrants without valid

promote the successful integration of immigrant workers by providing access to work supports and other services that help to maximize their valuable skills and resources. Conversations on state policy as well as federal immigration reform[35] should focus on ensuring that all families are able to participate fully in the workforce, public health system, schools, neighborhoods, and crime-prevention efforts — common sense policies that will improve health and safety for immigrants and U.S. citizens alike.

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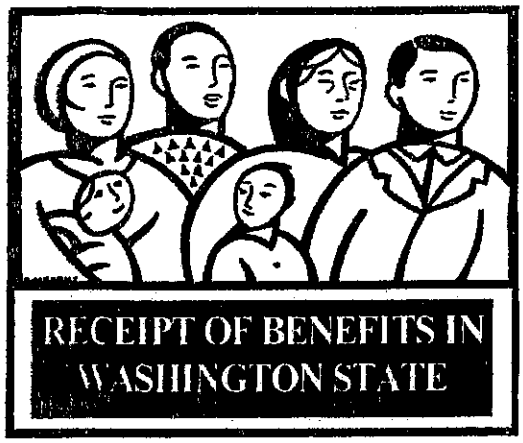
Social Security numbers contribute up to $8.5 billion in Social Security and Medicare taxes annually).

[35] Numerous proposals to reform the federal immigration system are circulating in Congress. For a summary of recent proposals, *see* National Immigration Law Center, "A Discussion of Immigration Reform Bills Introduced in 2005," *Immigrants' Rights Update*, Sept. 16, 2005, available at www.nilc.org/immlawpolicy/CIR/cir001.htm.

USCIS Guidance on " Public Charge"



USCIS GUIDANCE ON "PUBLIC CHARGE"

WHEN IS IT SAFE TO USE PUBLIC BENEFITS?

The U.S. government has important news about "public charge" – when receiving public benefits may affect your immigration status or your ability to travel outside of the U.S. The government's new guidance on public charge, which took effect May 25, 1999, gives clear rules about when it is and is not safe to use public benefits.

HIGHLIGHTS OF THE NEW PUBLIC CHARGE GUIDANCE

- Use of Medicaid, Healthy Options, children's health, prenatal care or other health services by you or your family members will ***not*** affect your immigration status unless you use Medicaid or other government funds to pay for long-term care (in a nursing home or other institution).
- Use of food stamps, WIC, public housing, or other non-cash programs by you or your family members will ***not*** affect your immigration status.
- Use of cash welfare by your children or other family members will ***not*** affect your immigration status unless these benefits are your family's only income.
- Your own use of cash welfare, like SSI, TANF, State Family Assistance or General Assistance-Unemployable, ***might*** affect your immigration status, depending on your situation. This is because the USCIS or State Department can count these benefits in deciding whether you are likely to become a "public charge."

OVERVIEW OF PUBLIC CHARGE

▸ WHAT IS "PUBLIC CHARGE"?

"Public charge" is a term used in immigration law. The term describes persons who cannot support themselves and who depend on benefits that provide cash – like TANF State Family Assistance, GAU or Supplemental Security Income (SSI) – for their income. Depending on your immigration status, the United States Customs and Immigration Service (USCIS formerly INS) and State Department consular officers abroad can refuse to let you enter the U.S., re-enter the U.S., or become a permanent resident, if they think you will not be able to support yourself without these benefits in the future. Under very rare circumstances explained below, the USCIS can also deport you if you become a public charge within 5 years of entering the U.S. Public charge is not

an issue for immigrants who are applying to become a citizen. Public charge is not an issue for refugees or persons granted asylum.

HOW DOES THE GOVERNMENT DECIDE WHETHER SOMEONE COULD BECOME A PUBLIC CHARGE?

The USCIS or State Department should look at many factors to decide if you are likely to become a public charge in the future. Although the government can look at whether you used ***cash*** welfare in the past, it cannot make its decision based only on what happened in the past. The government must look at all of the following factors together to decide whether you might become a public charge in the future:

- Age (are you elderly or very young, and likely to need support?)
- Health (do you have an illness that requires costly treatment?)
- Income (are you low-income or poor with no assets?)
- Family size (do you have a large family to support?)
- Education and skills (are you working now or can you easily find a job?)

When you seek to enter the U.S. or apply for a green card, the government may ask you questions to see if you are likely to become a public charge in the future. It is important to give them information that shows you will not need benefits to support yourself. For example, if you are elderly, but have family in the U.S. with enough money to support you, or, if you have a special skill that will get you a good job in the U.S., you should give this information to the government.

WHAT KINDS OF BENEFITS MIGHT CAUSE A PUBLIC CHARGE PROBLEM?

In deciding whether you are likely to become a public charge, the USCIS can look at whether you have used cash welfare, such as SSI, TANF, State Family Assistance or General Assistance-Unemployable, or if you need long-term institutional care. But even if you used cash welfare in the past, you can still show that you will not need it in the future (for example, because you have a job now). The USCIS is supposed to look at your whole situation when it decides if you might become a public charge in the future.

WHAT IF I USED MEDICAID, HEALTHY OPTIONS, CHILDREN'S HEALTH, PRENATAL CARE, WIC, FOOD STAMPS OR OTHER NON-CASH PROGRAMS?

Using Healthy Options, children's health, prenatal care, WIC, or food stamps will not affect your immigration status. Using Medicaid can only be a problem if you are in a nursing home or other long-term care. All other non-cash programs, like housing, school lunch, job training, child care, shelters, disaster relief, and health clinics, will not cause a public charge problem.

WHAT IF MY CHILDREN OR OTHER FAMILY MEMBERS USE BENEFITS?

The USCIS will not look at whether your children or other family members used health care or other non-cash benefits like those listed above. If your children or other family members use cash welfare (like TANF, State Family Assistance, or SSI), it will not count against you in a public charge decision unless it is your family's only income.

APPLYING FOR A GREEN CARD

▶ I AM APPLYING FOR A GREEN CARD. CAN THE USCIS REFUSE TO GIVE ME A GREEN CARD BECAUSE THEY THINK I MIGHT USE CASH WELFARE ONE DAY?

Yes. If the USCIS thinks you cannot support yourself and that you will rely on cash welfare in the future, it can refuse to give you a green card -- even if you are not using cash benefits now. See the earlier question for some hints on how you might prove that you will not rely on cash welfare in the future. Using non-cash programs will not cause a problem when you are applying for a green card.

▶ I HAVE APPLIED FOR A GREEN CARD UNDERE THE VIOLENCE AGAINST WOMEN ACT. CAN USCIS DENY ME THE CARD IF I HAVE USED CASH WELFARE?

No. FOR VAWA APPLICANTS: if you or your child is a victim of domestic violence and you have petitioned under the Violence Against Women Act, consular officers and the USCIS are not permitted to consider benefits, even cash benefits, that you may have received when determining public charge. However, they may consider other factors described below.

▶ I USED CASH WELFARE SEVERAL YEARS AGO, BUT DO NOT RECEIVE CASH BENEFITS TODAY. WILL I HAVE TROUBLE GETTING A GREEN CARD?

You should not be denied a green card just because you used cash welfare in the past. But, you will need to show that you are not likely to need cash welfare in the future. It will be easier to show this if you used welfare a long time ago, or only briefly to get through a hard time.

▶ I AM NOT RECEIVING CASH WELFARE, BUT I AM VERY SICK, AND LIVE IN A NURSING HOME. COULD I HAVE TROUBLE GETTING MY GREEN CARD?

Yes. If you are in a nursing home or have a serious long-term illness, you will have trouble getting your green card unless you can show that you will be able to get the care you need in the future without relying on Medicaid or other publicly funded programs to pay for your institutional care.

▶ IF MY RELATIVE SPONSORS ME TO LIVE IN THE UNITED STATES, WILL THIS HELP ME PROVE THAT I WILL NOT NEED CASH WELFARE IN THE FUTURE?

Yes. Most people who are applying for a green card must have a "sponsor" who can show that he or she has enough money to support you (at 125% of the poverty level -- $20,875 for a family of four). If your relative does not have enough money to do this, she will have to find a "co-sponsor" who is also willing to help support you. Your sponsor and, if necessary, your co-sponsor, will each have to sign a legal agreement ("affidavit of support"), promising to support you until you have credit for 40 quarters (10 years) of work in the U.S., or until you become a U.S. citizen. Your sponsor and co-sponsor must also agree to pay the government if you use certain benefits during that time. This agreement will help convince the government that you will not need welfare.

REFUGEES AND OTHERS NOT SUBJECT TO PUBLIC CHARGE

▶ I AM A REFUGEE. WILL I HAVE PROBLEMS IF I USE PUBLIC BENEFITS?

No. The public charge law does not apply to the immigrants listed below:

- Refugees or persons granted asylum in the U.S.
- Cubans or Nicaraguans applying for adjustment of status under the Nicaraguan Adjustment and Central American Relief Act of 1997 (NACARA)
- Applicants for adjustment of status under the Haitian Refugee Immigration Fairness Act of 1998
- Cubans applying for adjustment under the Cuban Adjustment Act who were paroled as refugees before April 1, 1980
- Amerasian immigrants when they are first admitted to the U.S.
- "Lautenberg" parolees (certain Soviet and Indo-Chinese parolees applying for adjustment of status)
- Registry applicants (persons in the U.S. since before January 1,1972)
- Special immigrant juveniles

Using any benefits, including cash welfare, will not cause a problem for these immigrants.

PERSONS WITH GREEN CARDS

▶ I HAVE MY GREEN CARD. WHAT CAN HAPPEN TO ME IF I GET CASH WELFARE?

In general, using cash welfare will not be a problem for you once you already have your green card. It will not affect your ability to become a citizen. However, it could be a problem if you travel outside of the U.S. for more than 6 months -- see the question on travel below. Using non-cash benefits will not cause a problem for you.

▶ I HAVE MY GREEN CARD AND I GET CASH WELFARE. CAN I TRAVEL OUTSIDE OF THE UNITED STATES?

If you are a legal resident who gets SSI, TANF, State Family Assistance, GAU or other cash welfare right now, you should not travel outside of the U.S. for more than 180 days (about 6 months). Any time you are gone for more than 180 days, the INS can ask you questions about whether you are likely to become a public charge, and may not let you re-enter the country. If you are outside of the U.S. for 180 days or less, in most cases the INS will not ask you questions about public charge when you re-enter the U.S. The INS will only ask you these questions if you intended to live permanently in another country, committed certain crimes, or had a pending deportation or removal case when you left the country.

▶ I HAVE MY GREEN CARD AND GET PUBLIC BENEFITS. CAN I STILL RECEIVE MY BENEFITS WHILE I AM OUT OF THE COUNTRY?

If you plan to be outside of the country for more than 30 days, you should check with the agency providing the benefit. It may be against the rules to continue receiving public benefits while you are outside of the U.S. It could hurt your chances of re-entering the U.S. or becoming a U.S. citizen if you received benefits that you were not supposed to receive.

▸ WHEN I RETURN FROM A TRIP, CAN THE GOVERNMENT MAKE ME PAY BACK MEDICAL SERVICES LIKE MEDICAID OR PRENATAL CARE, OR FOOD STAMPS THAT I USED BEFORE I LEFT?

No. The government is not supposed to ask you to pay back these benefits unless you received them improperly (for example, if you were not really living in Washington but claimed to be a resident, or if you did not tell your welfare worker about all of your income). If you are at the airport or the border and the USCIS or other agency asks you to pay back benefits, you should get legal help immediately. This is true no matter what your immigration status is.

▸ I HAVE MY GREEN CARD. CAN THE USCIS DEPORT ME BECAUSE I USE BENEFITS?

No. The USCIS cannot deport you just for using public benefits that you qualify to receive. The INS can only deport you in rare cases. You cannot be deported unless ***all*** of the following are true:

- you received ***cash welfare or long-term institutional care*** for reasons that existed before you entered the U.S., and
- you got the cash welfare or long-term care ***less than*** 5 years after you entered the U.S., and
- you or your sponsor have a ***legal debt*** to the government agency that gave you the cash or long-term care, and you or your sponsor got a notice from the government that you owed the debt within 5 years of entering the U.S., and
- you or your sponsor have ***refused to repay*** the benefits after the government filed a lawsuit and won in court.

Most programs, like SSI, TANF, State Family Assistance and GAU, do not create a debt for you. In some states, General Assistance may create a debt for you. Some programs may create a debt for your sponsor. But no sponsor who signed an affidavit of support before December 19, 1997 has a legal debt to the government for a benefit that you received.

Remember, if you need benefits because you became sick, had an accident or other crisis ***after*** coming to the U.S., then you cannot be deported for using those benefits. If you begin using benefits more than 5 years after entering the U.S., then you cannot be deported even if you or your sponsor owes the government money for these benefits. For most permanent residents, this 5-year period starts again every time you enter the U.S. after being gone for more than 180 days.

CITIZENS AND APPLYING FOR CITIZENSHIP

▸ I HAVE MY GREEN CARD AND I AM RECEIVING SSI OR OTHER CASH BENEFITS. WILL THIS STOP ME FROM BECOMING A U.S. CITIZEN?

No. If you are properly receiving public benefits you cannot be denied citizenship for receiving benefits. But if you ever got public benefits improperly, or misled the USCIS when you got your green card, the USCIS may decide that you do not have "good moral character," and you could have trouble becoming a U.S. citizen. If you have any questions about this, you should talk to an immigration lawyer or community agency before you apply for citizenship.

▸ I AM A U.S. CITIZEN. WILL I LOSE MY CITIZENSHIP IF I GET BENEFITS?

No, you cannot lose your citizenship if you get benefits. Once you become a U.S. citizen the USCIS cannot deport you, and they must always let you re-enter the U.S. after a trip to another country.

SPONSORING YOUR RELATIVES

▸ WILL I HAVE TROUBLE SPONSORING MY RELATIVES IF I HAVE USED BENEFITS?

Using benefits should not affect your ability to sponsor your relative. You will need to show that you or your co-sponsor earn enough income to support your relative. To meet this requirement, you cannot count as income the benefits that you received. Currently, the affidavit of support form for sponsors asks whether you or your household members have used benefits within the past 3 years. This is only to make sure that you do not count any cash welfare when you add up your family's income.

IF YOU ARE NOT SURE whether public charge applies to you, talk to an immigration lawyer or community agency before you apply for a green card or before you travel outside of the U.S.

For more information: for Western Washington call Gillian Dutton at the Refugee and Immigrant Advocacy Project at Northwest Justice Project, 206-464-1519 or (toll free) 1-888-201-1012, CLEAR line (1-888-201-1014) or the Northwest Immigrant Right's Project (Western Washington) 206-587-4009, (Eastern Washington) 509-854-2100 . Updated January 2004

WHAT IS THE ALIEN EMERGENCY MEDICAL PROGRAM (AEM)

WHAT IS THE ALIEN EMERGENCY MEDICAL PROGRAM? (AEM)

I am an immigrant and need medical assistance because I am very ill. The welfare office (DSHS) tells me I cannot get regular medical coupons, is there a program that can help?

If you have a medical emergency, the federally funded Alien Emergency Medical (AEM) may be available to pay for services necessary to pay for that emergency.

Who is eligible?

Immigrants who are not eligible for regular medical coupons due to:

- their immigration status (they do not have an immigrant status known as known as "qualified" or they have a "qualified" immigrant status, but are in one of the groups in that category unable to receive non-emergency federal medical benefits for the first five years after they come to the US) or
- sponsor deeming (someone has filled out an affidavit of support Form I-864 on their behalf and it is still in effect so the "sponsor's" income and resources are considered by DSHS in determining financial eligibility for benefits)

Note: For a list of "qualified" immigrant status, see the publication Effective October 1, 2002, Some Immigrant Medical Programs Are Being Cut

If you are not eligible for regular medical coupons you must still be low income, have an emergency medical condition, and be "categorically related" to the program.

To be categorically related you must be one of the following:

- **a child under 18;**
- **a person in a family with dependent children;**
- **65 and over;**
- **disabled (must be unable to work for at least one year), or**
- **pregnant.**

What is an emergency medical condition?

An emergency medical condition is defined as --the sudden onset of a medical condition (including labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in

- Placing the patient's health in serious jeopardy
- Serious impairment to bodily functions ;or

- Serious dysfunction of any bodily organ or part.

What kinds of medical conditions fit into this definition?

Individuals requiring nursing home level of care or COPES meet the definition of having an emergency medical condition.

In addition, the following conditions are considered by DSHS to meet the definition.

Note. A number of the conditions listed below have been removed from the list by DSHS—see the current online manual for a comparison. This does not necessarily mean that the Department does not consider the condition an emergency, but it does mean that the medical panel at the Medical Assistance Administration (MAA) will review the condition. If the condition is denied as a non-emergency, be sure to consult a legal services attorney for advice.

Allergic Reaction Fever (Symptomatic)	Hemorrhage, i.e., Bleeding
Amputation of Limb	Hernia
Appendicitis	Hypothermia
Asphyxia, i.e., Strangling/Drowning	Infection, i.e., Cellulitis or Abscess of Any Body Part
Asthma, i.e. Acute	Kidney Failure
Bowel Obstruction	Kidney Infection
Bowel Perforation	Laceration (artery, nerve)
Brain Injury	Liver Failure
Burn Injury	Malignant Hypertension
Cancer Surgery with Radiation Therapy and Chemotherapy	Mental Breakdown
Cardiac Arrest	Meningitis
Chest Pain	Motor Vehicle Trauma
Coma Concussion	Pancreatitis
Convulsion	Peptic Ulcer (Bleeding, etc)
Deep Vein Thrombosis	Poisoning
Depression (Major)	Pneumonia
Diabetes Out of Control	Collapsed Lung
Dislocation of Joints	Pregnancy (labor/delivery)
Ectopic Pregnancy	Respiratory Failure
Electrocution	Seizures
Eye Injury	Shock

Fainting	Sunstroke
Fracture, i.e., Broken Bones	Stroke
Gangrene	Suicidal Ideation
Gallbladder infection	Wounds resulting from Trauma
Gallstones	
Heart Failure	
Heart Attack	

What if the condition I have is not on this list?

Conditions not on the list may be considered an emergency, but will need documentation from a health care provider. Show your doctor this brochure and ask her to explain why your health problem is an emergency. Give that letter to the welfare office when you apply.

Is this program available more than once a year?

Yes. The Alien Emergency Medical Program is available as often as you have an emergency condition that qualifies. You will be issued coupons to pay for the emergency for three months. If you still need coupons--for the same emergency or a different one--you can reapply.

How do I get information on my medical condition if I am not seeing a doctor?

The welfare office does not have to pay for evaluations of an emergency condition so most applicants will have to go to a community clinic or to the hospital to have the emergency diagnosed.

What if I am not in one of the categories of people eligible (children, families, 65 and over, pregnant or disabled) but I still have an emergency?

If you are between the age of 18 and 64 and are not disabled or pregnant and have no dependents, you can still get help if you are low income and need emergency care. Hospital Charity Care regulations prohibit hospitals from billing patients earning less than 100% of federal poverty guidelines for necessary medical services received. Patients with incomes between 100% and 200% of poverty will be billed a portion of the total bill.

What should I do if I apply for these programs and am denied?

You can request a fair hearing and contact a legal services lawyer for advice. For more information on fair hearings see the publication *Representing Yourself at a Fair Hearing*.

Where can I find the rules that describe the Alien Emergency Medical program?

You may find the rules in the Washington Administrative Code (WAC388-438-0110) and on the internet at http://www1.dshs.wa.gov/ESA/EAZManual/Sections/EA_AlienMedical.htm.

For other materials listed in this handout, check the NJP website at www.nwjustice.org.

(Updated November 2003)

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Questions & Answers About Driver's Licenses Now That the Real ID Act Has Become Law

Questions & Answers about Driver's Licenses Now That the REAL ID Act Has Become Law

June 2005

HISTORY AND TIMELINE

■ What is the history of the REAL ID Act?

- Congress passed the REAL ID Act as part of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005 (HR 1268), and the president signed it into law on May 11, 2005.
- The REAL ID Act, with its sweeping driver's license provisions, became law without hearings, testimony, or public discussion, even though it:
  - repeals the driver's license provisions enacted just a few months ago — in Dec. 2004 — as part of the Intelligence Reform and Terrorism Prevention Act;
  - tramples on states' rights to decide what makes their highways safer;
  - will make it harder and slower for everyone to get a license; and
  - will prevent many U.S. citizens and lawful residents from being able to get a driver's license.

■ Does the REAL ID Act force states to immediately change their driver's licenses?

- No. It provides that beginning 3 years after the REAL ID Act's enactment (May 2008), driver's licenses cannot be accepted by federal agencies for any "official" purpose unless they meet the requirements of the act.
- The requirements do not cause any immediate change in state laws or administrative procedures.
- Driver's licenses already issued remain valid, despite the REAL ID Act.
- States may choose not to have their driver's licenses meet the REAL ID Act's requirements, for reasons of public safety, cost, or other public policy reasons. Their residents may present alternative documents for federal official purposes. Moreover, many states may be unable to meet the act's requirements, and their residents likewise will be able to present acceptable documents for federal official purposes, such as a passport or military ID.

■ What timeline will the states follow?

- That will differ from state to state, depending on states' legislative schedule and whether changes can be made administratively rather than legislatively.
- States will have 3 years (until May 2008) to make their licenses and the issuance process

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conform to the REAL ID Act's requirements. The 3-year deadline may be extended by the Dept. of Homeland Security (DHS).

- No later than Sept. 11, 2005, states must enter into a memorandum of understanding (MOU) with the secretary of DHS to routinely use the Systematic Alien Verification for Entitlements (SAVE) automated system to verify the legal presence status of non–U.S. citizen driver's license applicants.

- **Does the requirement that states enter into an MOU with DHS by Sept. 2005 mean that states must immediately begin verifying driver's license applicants' immigration status with DHS?**
  - No. States must enter into an MOU with DHS by Sept. 11, 2005. No date is set for use of the system.

- **Should states move quickly to enact laws implementing the REAL ID Act?**
  - No. Changes, if made, should be implemented in a thoughtful, deliberate manner.
  - DHS is required to issue regulations to implement the REAL ID Act. States that implement the act before the regulations are issued will likely have to make revisions later. This would pile additional expense on top of the initial implementation costs.
  - No money has yet been appropriated to assist states in shouldering the costs of implementation.
  - Limiting or denying access to driver's licenses will have serious ramifications. For example, denial of state ID may interfere with U.S. citizens' right to vote, as well as their access to benefits and services. Immigrants who are unable to obtain a license because their legal status makes them ineligible or because they cannot present required documents will be unable to drive legally. States need to move cautiously to make sure they do not interfere with the constitutional rights of citizens and immigrants alike.
  - There may be alternatives in implementation of REAL ID that states should consider.

IMPLEMENTATION OF THE REAL ID ACT

- **What is an "official" federal purpose?**
  - Under REAL ID, an official federal purpose includes accessing federal facilities, boarding commercial aircraft, entering power plants, and any other purpose the secretary of DHS shall determine.

- **Doesn't the REAL ID Act just prevent states from issuing driver's licenses to undocumented immigrant drivers?**
  - No. The REAL ID Act covers all aspects of driver's license issuance: the information on the license; technology; acceptable documentation to obtain a license; and storage and sharing of personal information. Proof of citizenship or lawful immigration status is just one of the many requirements that states will have to meet for their licenses to be acceptable to federal agencies.
  - The one-size-fits-all rules are so comprehensive that no state currently complies with all of them. All states will have to change their driver's license rules if they want their driver's licenses to be accepted by the federal government for any official purpose.

- **Will unexpired licenses remain valid until renewal even if state laws change?**
  - Most likely yes. We do not expect most states to recall licenses that have not expired if state laws change to comply with the REAL ID Act. Apart from questions of legality, this would be administratively burdensome and prohibitively expensive.

- **How much flexibility do the states have in implementing the REAL ID Act?**
  - Advocates are beginning to consider alternatives for states to consider, such as:
    - States could choose not to implement REAL ID's requirements. People would need to find alternative forms of ID for flying, entering federal buildings, etc., such as a passport or military ID.
    - A state driver's license could remain as is, and REAL ID's requirements would be implemented on a state ID card. People who need ID for flying, entering federal buildings, etc., could either use a passport or military ID or get a state ID card.
    - A state could implement REAL ID requirements for driver's licenses and create a separate driving certificate for those who can't satisfy REAL ID's requirements. Two sub-options are that the state could make the certificate available to undocumented immigrants and lawful immigrants made ineligible for driver's licenses under REAL ID (e.g., applicants for adjustment of status under the Violence Against Women Act); or the state could make the certificate available to undocumented immigrants and lawful immigrants made ineligible for driver's licenses under REAL ID and also to nonimmigrants (under REAL ID they *could* be eligible for a temporary license instead).
    - In a state that creates a driving certificate, U.S. citizens and lawful residents would have the option to "opt-in" to the certificate. If they needed an ID for federal purposes, they would use a passport, military ID, or other acceptable identification.
  - These alternatives must be thoroughly researched, and there may well be other alternatives that states can consider.

- **What effect will the REAL ID Act's requirements have on U.S. citizens and legal immigrants?**
  - They will be at risk of identity theft as information is electronically shared by the states.
  - Citizens who cannot prove their U.S. citizenship, and citizens and immigrants who cannot use their foreign documents or whose documents are insufficient or cannot be verified will be denied licenses.
  - Presenting the state department of motor vehicles with documents that prove the applicant's identity, date of birth, citizenship or immigration status, Social Security number, legal name and physical residence won't be enough. DMVs won't be able to issue a license until the agency that issued the documents verifies their authenticity. These documents include birth certificates, documents that prove physical residence (such as leases, utility bills, bank statements, or telephone bills), court documents, Social Security cards, U.S. and foreign passports, and immigration documents.
  - Instant or electronic or manual verification of the authenticity of all these documents is simply not feasible.
  - Denials, delays, and repeated trips to the DMV will be the norm. Lines will be longer at DMVs as staff verify documents of citizens and immigrants alike and as drivers with temporary licenses have to renew their licenses more frequently.

ELIGIBILITY RULES FOR CITIZENS AND IMMIGRANTS

Who is eligible for a driver's license under the REAL ID Act's rules?

- States must require documentary evidence that an applicant is a citizen or national of the U.S. or is a noncitizen who:
  - is lawfully admitted for permanent or temporary residence;
  - has conditional permanent resident status;
  - is an asylee or refugee;
  - has a valid, unexpired nonimmigrant visa or nonimmigrant visa status;
  - has a pending asylum application;
  - has a pending or approved application for temporary protected status (TPS);
  - has deferred action status; or
  - has a pending application for adjustment of status to lawful permanent residence.
- A noncitizen in the nonimmigrant, asylum applicant, TPS, deferred action, and adjustment applicant categories may receive only a temporary license. It can be valid only for the period of the applicant's authorized stay in the U.S. or one year if there is no definite end to the authorized stay. It must state that it is "temporary," and it must state its expiration date.
- If a state issues a driver's license that does not satisfy the REAL ID Act's requirements, the license must say on its face that it cannot be accepted by the federal government as ID, and it must have a unique design and color.

Won't it be easy for DMV employees to check citizenship and immigration status?

- No. Many U.S. citizens do not have birth certificates or other evidence of U.S. citizenship. Birth certificates often cannot be electronically verified.
- Our immigration system is disorderly, and not every legal immigrant has the same immigration document to prove status.
- Visas and immigration statuses can be proved by myriad documents and do not have simple expiration dates. Many noncitizens are still lawfully in the country even though their immigration document may have expired.
- DHS is hopelessly behind on processing immigration applications and changes in or extensions of status. Many noncitizens won't be able to obtain or prove their lawful immigration status.

IMPACT ON STATES

How extensive are the REAL ID Act's requirements?

- Very. Under the requirements, states must:
  - Include specified information on the driver's license.
  - Issue licenses with a common machine-readable technology, with defined minimum data elements.
  - Require documentary proof that the DL applicant is a citizen or falls within certain categories of lawful immigration status.
  - Only issue a temporary DL to certain lawfully present immigrants, with specific requirements: the DL must expire with the person's authorized stay in the U.S. or after one

year; the license must clearly indicate it is temporary and state the expiration date; the license can only be renewed upon proof that the person's lawful immigration status has been extended.

- Verify with the issuing agency the issuance, validity, and completeness of each document required to be presented to prove identity, full legal name, date of birth, Social Security number, address of principal residence, citizenship, and immigration status.
- Not accept foreign documents, other than a passport, to prove identity, legal name, and date of birth.
- Enter into a memorandum of agreement by Sept. 11, 2005, with the secretary of DHS to verify legal status of noncitizen applicants.
- Use technology to capture digital images of identity source documents so they can be retained in electronic storage in a transferable format.
- Retain paper copies of source documents for a minimum of 7 years or images of source documents for a minimum of 10 years.
- Subject all DL applicants to mandatory facial image capture.
- Confirm Social Security numbers with the Social Security Administration and resolve discrepancies.
- Refuse to issue a DL without confirmation that the applicant has terminated a DL issued in another state.
- Enhance the physical security of locations where DLs are produced and the security of document materials and papers from which they are produced.
- Subject persons authorized to manufacture or produce DLs to appropriate security clearance requirements.
- Establish fraudulent document recognition programs for employees engaged in DL issuance.
- Limit the validity of nontemporary DLs to 8 years.
- If they issue a driver's license that doesn't comply with REAL ID, say on the license's face that it cannot be accepted by the federal government as ID and use a unique design and color for the license.
- Provide electronic access to all other states to information contained in the state's motor vehicle database.
- Maintain a motor vehicle database that contains all the information printed on the DL and motor vehicle drivers' histories.

■ What will states have to do to meet these requirements?

➢ These are major changes to driver's licenses and the issuance process, and they will be expensive for states to implement. For example,

- States do not currently use common machine readable technology for their licenses.
- Many states have exceptions to their requirement that DL applicants provide their current address (the address of their current principal residence), in order to protect victims of crime or accommodate homeless people — exceptions that would not be permitted under the REAL ID Act.
- States have their own definitions of the legal immigration presence requirement or have no legal presence requirement at all.
- Most states do not issue temporary licenses that comply with the statute.
- States accept a variety of domestic and foreign documents from DL applicants to prove their identity, legal name, and date of birth, many of which documents will be unacceptable under the statute.

- States do not require verification with the issuing agency of all documents presented to prove applicants' identity, date of birth, citizenship or immigration status, Social Security number, legal name and physical residence verifies its authenticity. These will include birth certificates, utility bills, Social Security cards, and both U.S. and foreign government-issued passports. Electronic verification is not available for many of these documents.
- Few states now verify immigration status with DHS.
- States do not generally store paper or electronic copies of documents presented to obtain a license and do not have the facilities or staff to store these documents.
- State DMV employees do not have security clearances that the REAL ID Act will require.
- Some states issue licenses for more than 8 years — the limit under the REAL ID Act.
- States do not provide all other states with electronic access to their databases, which is mandated by the REAL ID Act.

■ Will these changes be easy for states to make?

➢ No. The National Conference of State Legislatures (NCSL) calls the REAL ID's driver's license provisions unworkable. According to the NCSL, the "REAL ID Act threatens to handcuff State officials with impossible, untested mandates, such as requiring instant verification of birth certificates without providing the time or resources needed to bring 200 million–plus paper documents into the electronic age." See NCSL statement at http://www.ncsl.org/programs/press/2005/pr050208.htm.

➢ The National Governors Association (NGA) and the American Association of Motor Vehicle Administrators (AAMVA) opposed the REAL ID Act because it will "impose technological standards and verification procedures on states, many of which are beyond the current capacity of even the federal government. Moreover, the cost of implementing such standards and verification procedures for the 220 million driver's licenses issued by states represents a massive unfunded federal mandate."

■ Who will pay the costs for states to comply with the REAL ID Act?

➢ No money has yet been appropriated by the federal government to reimburse the costs of compliance. If money is appropriated, it will likely only partially compensate the states.

➢ The NCSL earlier estimated that REAL ID will cost states $500 to $750 million over 5 years, plus an annual ongoing cost of $50 to $75 million to operate.

➢ The NCSL now believes that figure will be far higher, perhaps in the billions, as more accurate estimates are obtained.

➢ Virginia has estimated that REAL ID Act implementation will cost the state $237 million (or $45 per licensee).

PRIVACY ISSUES

■ Does the REAL ID Act provide any exceptions for states that have laws to protect the privacy of information, such as the addresses of victims of violence, or does it provide for special procedures for homeless people?

➢ No. The REAL ID Act requires that the address of principal residence be printed on the DL. If states continue to require all this information to be confidential, or provide alternatives for the homeless, their licenses may not comply with REAL ID Act's requirements.

- **Does the REAL ID Act protect the confidentiality and security of personal information in state motor vehicle databases?**
  - No. The REAL ID Act requires that states have electronic access to information contained in the motor vehicle databases of all other states, with:
    - no confidentiality or security protections;
    - no limits on what information must be shared;
    - no limits on who has access to the information;
    - no limits on use or re-use of the information; and
    - no penalties for misuse.

ADVOCACY

- **Is there more that advocates interested in driver's license issues can do?**
  - Absolutely. Many in Congress did not recognize how irrational many of REAL ID's requirements are and how complex they would be to implement. They need to hear from their constituents.
  - It will be crucial for advocates to monitor and challenge changes in state driver's license laws. We will need to know how driver's license laws are functioning on the ground, both for immigrants and citizens. We will need to present evidence about the degree to which the rules Congress has passed are dysfunctional. State advocates are in the best position to do this.
  - Advocates need to continue to find new allies. REAL ID's requirements that driver's license applicants prove U.S. citizenship or lawful immigration status and that the authenticity of documents be verified with issuing agencies will burden everyone. They will prevent many people from getting driver's licenses. Advocates need to join forces with others, such as privacy advocates, states' rights advocates, and civil rights advocates, who will be affected by the new requirements.

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Overview of State' Driver's License Requirements

Overview of States' Driver's License Requirements

UPDATED: July 12, 2005

States that require a Social Security number (SSN) for a driver's license with no exceptions (2)	DC and SD
States that require an SSN for a driver's license only of people who have been assigned one or are eligible for one (47)	AK, AZ, AR, CA, CO, CT, DE, FL, GA, HI, ID, IL, IA, IN, KS, KY, LA, MD, ME, MA, MN, MI, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, TN, TX, UT, VA, WA, WV, WI, and WY • AK, AZ, AR, CA, DE, FL, IL,* MS, NE,* NV, OH, OK and RI* require only applicants who have been assigned an SSN or who are eligible for an SSN to provide one. • CO, CT, IN, IA, KS, MD, MI, MN, MO, OR, TN, TX, WI and WY allow applicants without SSNs to submit an affidavit or certify that they have either never been issued an SSN or are ineligible for one. • ID (also requires proof of lawful presence and proof of identity), GA, HI (also requires govt.-issued photo ID or document deemed acceptable by the director), LA, ME, MA,* MT, NH, NJ, NY,* ND, PA, SC, VA and WA require applicants without SSNs to submit verification from the Social Security Administration that none has been assigned or a denial letter from the SSA. • IL (in the case of religious objections), KY (also accepts letter from SSA in the case of religious objections or an affidavit), NM, NC, UT, and WV require or request applicants to submit an ITIN.
States that have lawful presence requirements **in the law** (25)	AL, AZ, AR, CA, CO, CT, FL, GA, ID, KS, KY, LA (grants temporary licenses to those in the agricultural industry, regardless of immigration status), MN, MS, MO, MT, NH, NJ, OH, OK, PA, SC, SD, VA, and WY

*Also requires proof of lawful presence.

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States that have lawful presence requirements that are created by agency policy or the combination of documents required of driver's license applicants (15)	AK, DE, DC, IL, IN, IA, MA, NE (only required if no SSN), NV, NY, ND, RI (only required if no SSN), TX, VT (only required if no SSN), and WV
States that don't have lawful presence requirements (11)	HI, ME, MD, MI, NM, NC, OR, TN,[1] UT,[2] WA, and WI
States that accept the ITIN as an alternative to the SSN (6)	IL (in the case of religious objections) KY, NM, NC, UT, and WV.
States that accept the *matrícula consular* or other foreign ID card as a form of ID (10)	ID, IN, MI (accepted on case-by-case basis), NE, NM, OR (must be approved by DMV), TX, UT, WA, and WI
States that require that the driver's license expire with an immigrant's visa (26)	AL, AZ, CA, CO, DC, FL, IA, KY, LA, MN, MO, MT, NJ, NV, NY, OH, OK, PA, SC, SD, TN, UT, VT, VA, WV and WY

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[1] As of July 1, 2004, U.S. citizens and lawful permanent residents receive a DL and all other non–U.S. citizens receive a "certificate for driving."

[2] As of March 8, 2005, applicants without a Social Security number will receive a "driving privilege card."