



SNAPSHOT OF THE “HAGEL-MARTINEZ COMPROMISE” IMMIGRATION REFORM LEGISLATION

April 2006

The “Hagel-Martinez compromise” immigration reform legislation was introduced as the “Comprehensive Immigration Reform Act of 2006” (S. 2611 and S. 2612). It amends the Senate Judiciary Committee’s immigration reform bill and includes a number of new provisions, some of which were added as amendments during the Senate floor debate. This document is a snapshot of the new bill’s contents. It is not an exhaustive summary of the bill.

Title I (“Border Enforcement”)

- Increases border and other enforcement personnel.
- Requires the detention of certain undocumented immigrants located at or between ports of entry, with specific exemptions.¹
- Provides for technology and border infrastructure enhancements, including construction of border fencing in parts of Arizona.
- Requires a national strategy for border security, as well as strategic plans for communication and coordination among law enforcement entities at the international, federal, state, and local levels.
- Requires other changes to port of entry screening, including biometric data enhancements and updates to the US-VISIT exit-entry monitoring program.
- Creates a new ground of inadmissibility for withholders of biometric information, and new criminal penalties for evading inspection.

Title II (“Interior Enforcement”)

- Expands the definition of “criminal alien smuggling,” but offers a “humanitarian” exception for groups and individuals who provide assistance to undocumented immigrants.
- Expands the types of offenses that can be classified as an “aggravated felony,” an immigration label for criminal conduct that leads to mandatory detention, deportation and ineligibility for most immigration relief.² Most of these provisions apply to conduct after enactment.
- Restates the obligation of any alien ordered deported to cooperate with DHS’ attempts to deport him; undercuts two Supreme Court decisions by also allowing DHS to indefinitely detain foreign nationals with final orders of deportation who cannot be deported through no fault of their own.³

1 Exempted from mandatory detention are the following: Mexicans, Cubans, people who withdraw applications for admission and depart immediately, people who pass credible fear screening, and those paroled in for urgent humanitarian reasons or significant public benefit.

2 Crimes need not be “aggravated” nor “felonies” to be classified “aggravated felonies” under the immigration code.

3 The U.S. cannot deport individuals to countries where we lack diplomatic ties, or if their home countries refuse to accept their return, or the individuals are stateless.

- Expands the criminal code to include additional passport, visa, and document-related offenses, with a limited exemption for certain vulnerable populations (such as refugees, asylees, and trafficking victims) who may rely on false documents to flee abuse.
- Makes every person identified in the newly-expanded category of passport, visa, and document-related offenses inadmissible and/or deportable. This could reach individuals who omit any piece of information on an immigration application, even if this information was minor. These provisions apply primarily to prospective conduct.
- Mandates expedited removal (quick deportations by immigration officers without an opportunity for review or to go before a judge) of non-legal permanent residents who have committed certain crimes.
- Mandates expedited removal of undocumented aliens located within 100 miles of the border who cannot prove they have been in the U.S. for more than 14 days. This provision applies only to individuals who are not nationals of Mexico, Canada, or Cuba.
- Increases detention bed space by 10,000.
- Severely limits judicial review of DHS decisions, even when the decision is based on factual or legal errors.
- Includes some provisions from the CLEAR Act to encourage state and local police to enforce immigration laws. For example, the bill dramatically expands the entry of civil immigration law violators into the National Crime Information Center (NCIC), a national criminal databases accessed by local police.
- Includes excessive new penalties for failure to timely file a change of address form with DHS.

Title III (“Unlawful Employment of Aliens”)

- Creates a new Electronic Employment Verification System (EEVS) for employers to use to evaluate the work authorization of individual employees. Requires full employer participation in the program within 18 months of funds being appropriated for the system. Permits the Secretary of DHS to require that certain “critical employers” participate in the EEVS within 180 days of enactment.
- Reduces the types of documents an individual could use to establish identity at the employment site. Identifies the social security card as the only document that can be used to show employment eligibility.
- Establishes a secondary verification process when the employer’s response about work authorization is a “tentative non-confirmation” (meaning it appears that the individual is not authorized to work). The worker is given an opportunity to check her own status in the electronic verification system.
- Bars noncompliant employers from receiving federal contracts, grants, or cooperative agreements.
- Protects anyone who has complied with the EEVS and relied on its accuracy in good faith from liability.
- Prohibits use of the EEVS for any purpose other than the administration or enforcement of immigration, Social Security, and criminal laws.
- Establishes a procedure for filing complaints and investigating potential violations of the EEVS.

- Requires employers to investigate Social Security “no match” letters and keep documentation of related information.
- Prohibits employers from avoiding liability for unlawful hiring of unauthorized aliens through a subcontractor.
- Increases penalties and evidentiary burdens on employers who are alleged to have hired unauthorized aliens, or to have failed to comply with the documentation, record-keeping, and other requirements included in Title III.

Title IV (Nonimmigrant and Immigrant Visa Reform”)⁴

The bill creates a temporary worker program (H-2C visa program), with a potential path to legal permanent residence for individuals currently outside the U.S., subject to the following conditions:

- Employers seeking to hire foreign workers through this program would first have to undergo recruitment efforts to find an available U.S. worker, including advertising the job at prevailing wage. If no appropriate U.S. worker is found, the employer would then have to attest to his recruitment and hiring efforts, as well as several other requirements, in his application for a foreign worker.
- Worker must pay a \$500 fee plus application costs, and undergo background, security, and medical checks.

Other Features of the H-2C Visa Program

- The bill would provide foreign workers for low-skilled jobs that would otherwise go unfilled, admitting up to 325,000 workers annually through a new temporary worker program. This cap would adjust based on use of the program (i.e. if the cap is exhausted during the fiscal year, it would increase in the following year; if the cap is not met, it would decrease).
- These visas would not be available to workers coming to perform services in areas in which the unemployment rate for unskilled or low-skilled workers averages more than 11% for the previous six months.
- Some grounds of inadmissibility may be waived for prior conduct. Grounds of inadmissibility that may not be waived: those related to security, crimes, polygamists, and child abductors.
- The work visa would be valid for three years, and could be renewed once for three more years. If the worker is unemployed for 60 days, she must leave the U.S. DHS can waive this requirement.
- Provides portability to employers who have undergone the worker program attestation requirements and were unable to locate appropriate U.S. workers.
- Qualified workers and their families would be provided an opportunity to apply for legal permanent residency (after one year with an employer sponsor, or four years on their own as a “self-petitioner”).

⁴ There were three important changes to this section that are part of the compromise: 1) lowering the cap from 400,000 to 325,000 workers a year; 2) requiring that jobs be advertised at the prevailing wage; and 3) adding 2,000 new DOL inspectors to monitor employers under this program.

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- Requires DHS to negotiate bilateral agreements with sending countries.

Title IV also makes modifications/additions to the S and L visa programs.

Title IV also includes the “Fairness in Immigration Litigation Act,” which limits relief ordered against the federal government in any civil action related to the administration or enforcement of immigration laws in the U.S.

Title V (“Backlog Reduction”)

- Increases the employment-based visa cap from 140,000 to 450,000 through 2016; after 2016, lowers the cap down to 290,000.
- Stops counting derivatives (spouses and children) of employment-based immigrants against the employment-based visa cap.
- Stops counting “immediate relatives” (immigrant spouses and children of U.S. citizens) against the overall family-based immigrant cap of 480,000.
- Redistributes employment and family-based visas among existing preference categories; allows for the re-capture of immigrant visas that go unused due to processing delays (so that those visas may be used the following year).
- Preserves a portion of employment-based visas for immigrants who were unlawfully present in the U.S. before January 7, 2004.
- Provides foreign students with some flexibility to engage in employment and apply for legal permanent residency.
- Creates a new visa for students pursuing advanced degrees in math, engineering, technology or the physical sciences, with a path to legal permanent residency. Such students are not subject to the employment-based visa cap.
- Exempts several categories of highly-skilled workers (and their spouses and children) from the employment-based immigrant visa cap.
- Includes the Widows and Orphans Act, which creates a new visa category for certain children and women at risk of harm.

TITLE VI (“Work Authorization and Legalization of Undocumented Individuals”)

GROUP 1 – UNDOCUMENTED IMMIGRANTS IN THE UNITED STATES FOR MORE THAN FIVE YEARS

The bill provides work authorization and path to legal permanent residence for long-term undocumented immigrants who meet the following requirements:

- Have resided in the U.S. for at least five years prior to April 5, 2006.

- Worked a minimum of three years during the five year period, and continue to work at least six years after enactment (Some exceptions are made for people with disabilities, who leave the workforce as a result of pregnancy, and children).
- Pass national security and criminal background checks.
- Pay all federal and state income taxes owed.
- Are admissible under immigration law. (Some grounds of inadmissibility do not apply or can be waived.)
- Register for Military Selective Service.
- Meet English and U.S. civics learning requirements. (Some exceptions are made for disabled and elderly people.)
- Pay a \$2,000 fine for each adult legalizing, in addition to application fees.

Features of the Earned Legalization Program

- The earned legalization program would be fully funded by application fees; the additional \$2000 paid by each legalizing worker would be directed to border enforcement and DHS/DOS infrastructure.
- Certain grounds of inadmissibility may not be waived: those relating to health, criminals, security, polygamists, and child abductors.
- Individuals with removal orders, voluntary departure agreements, or who are in removal proceedings may apply for legalization; they may not be detained or removed from the U.S. pending a decision on their legalization applications, unless their deportation is for criminal or security reasons.
- Individuals who pass initial background checks may obtain work and travel authorization while awaiting final decisions on their applications for legal permanent residency.
- Family members may be derivatives on the adjustment application.
- Applicants may not obtain legal permanent residency until existing backlogs for immigrant visas are cleared.
- Visas awarded under this program will not count against the normal numerical limitations for immigrant visas.
- The bill includes some protections for employers whose formerly undocumented workers are on the path to legalization.
- It also protects the immigrant by stating that information furnished by the applicant may not be used for any purpose other than to make a determination on the application.
- The bill includes both administrative and judicial review of denials, including mandatory stays of removal for cases under review.

GROUP 2 – UNDOCUMENTED IMMIGRANTS IN THE UNITED STATES ON JANUARY 7, 2004 BUT WHO DO NOT MEET THE REQUIREMENTS IN GROUP 1

The bill creates a “Deferred Mandatory Departure” (DMD) status that provides work authorization and an eventual path to legal permanent residency for undocumented immigrants, if they meet the following requirements:

- Were physically present in the U.S. on January 7, 2004.
- Were employed in the U.S. before January 7, 2004 and continuously employed since.
- Pass national security and criminal background checks.
- Are admissible under immigration law (Some grounds of inadmissibility do not apply or can be waived).
- Admit under oath to being unlawfully present; turn in any false documents used to obtain work.
- Pay a \$1000 fine plus application fees (Spouse and children must submit an additional fine of \$500 each as well as application fees).

Features of the DMD Program

- A DMD grantee would receive up to three years U.S. work authorization. However, if he has not left the country after one year, he would be subject to additional monetary penalties.
- Failure to depart at the conclusion of three years would make the DMD holder ineligible for most types of immigration benefits or relief for a period of ten years.
- DMD holders could travel outside the U.S. legally and be readmitted if the period of DMD had not expired.
- DMD holders who are out of work for more than 60 days must leave the U.S. and re-enter before obtaining a new job.
- The DMD program would be fully funded by application fees; the additional fines paid by workers and their family members would be directed to immigration law enforcement.
- Aliens granted DMD are not subject to the unlawful presence bar to reentry at INA 212(a)(9).
- Individuals ordered removed, excluded, deported or to depart voluntarily or who have failed to comply with any “request for information” from DHS are INELIGIBLE for DMD status.⁵
- The applicant would be required to waive any right to administrative or judicial review or appeal of his eligibility, as well as waive any right to contest any removal (other than refugee-related relief).
- DMD holders could apply for readmission as an immigrant or nonimmigrant while still in the U.S. or from any location outside the U.S., but would not be granted admission until he or she has actually departed the U.S. The individual would not have to return to his home country, but rather leave the U.S. and re-enter through a port of entry (undergoing the inspection process typical of international arrivals). The individual would not be required to be interviewed at the consulate.
- The departure requirement could be waived if the DMD holder is granted an immigrant or nonimmigrant visa and can demonstrate substantial hardship on him or an immediate family member if forced to leave the U.S.
- Family members may be derivatives on the DMD and subsequent immigration applications. They are not subject to the return requirement.

⁵ The language is subject to interpretation, but could potentially reach anyone who did not comply with the “special registration” program or change of address requirements.

- DMD holders could not obtain legal permanent residency until existing backlogs for immigrant visas are cleared.
- Numerical limitations for DMD grantees (and their family members) who are returning to the U.S. as *nonimmigrants* would be waived. *Immigrant* visas awarded to this group will count against the numerical limits for immigrant visas.

GROUP 3 – UNDOCUMENTED IMMIGRANTS WHO ENTERED THE U.S. AFTER January 7, 2004

- These individuals must depart the U.S., but would be eligible to apply for a temporary worker visa under Title IV from their home countries.
- Certain inadmissibility grounds, including the three and ten-year re-entry bars, could be waived for these individuals seeking to re-enter as H-2C temporary workers (with an eventual path to legal permanent residence).
- Principal applicants would be counted against the numerical limitations on H-2C visa holders.

AgJOBS: Title VI contains a modified version of AgJOBS, creating an agricultural worker program that includes earned legalization for undocumented farm workers.

Strengthening American Citizenship Act of 2006: Title VI contains the Strengthening American Citizenship Act, promoting naturalization among immigrants and codifying the oath of allegiance that is taken by immigrants accessing U.S. citizenship.

DREAM Act: Title VI contains the DREAM Act, providing a path to legal permanent residency for certain undocumented students who have been educated in the U.S.

Title VII (“Miscellaneous”)

- Increases personnel (immigration judges, trial attorneys, attorneys in the Office of Immigration Litigation, attorneys in the U.S. Attorney’s Office, etc.).
- Make some improvements to process and structure at the Board of Immigration Appeals.
- Requires a GAO study on federal court structure, including evaluating the viability of creating a single federal court of appeals to review immigration cases.
- Allows would-be green card holders with pending legal permanent residency applications (as of date of enactment) to apply and pay for a waiver of certain admissibility bars related to unlawful presence and reentry after being ordered removed.
- Creates a grant program for State court interpreters.
- Creates a program with dedicated funding for dissemination of information about the new programs authorized in earlier titles of this legislation, including the legalization and worker programs.
- Includes other “miscellaneous” authorizations related to citizenship for U.S. military personnel, border infrastructure and technology, foreign athletes, immigration relief for victims of terrorism, and other programs.