



## Bars to Adjustment: Unintended Consequences in the “Hagel-Martinez Compromise” Immigration Reform Legislation in the Senate

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The Hagel-Martinez “Compromise” was introduced as the “Comprehensive Immigration Reform Act of 2006” (S. 2611 and S. 2612). Like the Senate Judiciary immigration bill, the compromise contains new and broad “document fraud” penalties that would subject a number of immigrants to criminal prosecution, deportation, detention, and ineligibility for most immigration benefits, including legalization. The compromise applies the new penalties to conduct following enactment.<sup>1</sup> These penalties could unfairly impact those who omit or make a false statement in an I-9 form in order to work after enactment but before CIR is actually implemented. These provisions could also impact those who file for an immigration benefit (i.e., family based petition) after implementation if they omit an address or submit a supporting document that contains false or missing information.

The compromise also imports the entire category of newly created document offenses into the aggravated felony definition. This means that an immigrant who omits factual information in her visa application can be later prosecuted and classified as an aggravated felon. The consequences of an “aggravated felony” conviction are severe—and include mandatory detention, permanent deportation, and ineligibility for any type of relief. Detention and permanent banishment from the United States is an excessive punishment to impose on someone who comes to the United States to escape violence or to find work, because she omits a word in an immigration application or travels with a document bearing a different name. These are unintended consequences.

Below is a sampling of how these unintended consequences might affect individuals :

- After enactment of this bill, Alex, a farmer, does not include a previous address on an application for an ITIN number. This omission can be considered a “false statement” under the bill and trigger prosecution, deportation, and ineligibility for any legalization program provided by the bill.
- Benito, the brother of a lawful permanent resident “admits” to an immigration officer that his family petition contained a wrong birthdate. Based on this admission, Benito can be deemed inadmissible to the U.S. and ineligible for immigration relief.
- Rosa, a young woman who has been mistreated and abused by local authorities for her political opinions and who obtains a passport with a different name in order to flee this abuse could be found inadmissible under these provisions and barred from asylum and other refugee-related relief.
- Roberto has been working for a U.S. employer for three years as a cook at a Mexican restaurant. Roberto is excited to learn that he is eligible for a new worker program passed by Congress and begins the application process. Like many workers, Roberto submitted an I-9 form with a false social security number in order to work. If Roberto’s use of a false I-9 is considered to be a

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<sup>1</sup> The compromise retains an amendment that passed in the Senate Judiciary Committee that would repeal the retroactive application of the new document fraud penalties. This ensures that many eligible immigrants can participate in status adjustment offered in the proposed immigration reform legislation without being subject to document fraud penalties based on past conduct. But these penalties could impact immigrants for past conduct if the government interprets such conduct as a “continuing offense” (such as a previously filed I-9 that is currently relied upon by the immigrant for work).

“continuing offense” because it currently serves as the basis for his employment or if Roberto used the false I-9 when he changed jobs after enactment of this legislation but before applying for legalization, Roberto can be barred from legalization, detained, and deported.

- Jeanne, the wife of a U.S. citizen and mother of a U.S. citizen child, enters on a visa and stays beyond the authorized period. Her husband petitions for Jeanne, but there is a brief period of time during which Jeanne works at a clothing store while out of status. To get that work, she submits to her employer false information about her employment authorization on the required form I-9. Provisions in the compromise would make the mere admission of such an offense, even without a conviction, an absolute bar to obtaining lawful permanent residence through family immigration.

**Congress should consider ameliorative amendments to ensure that well intentioned immigrants who would ordinarily be eligible for any status adjustment offered by the legislation—or some other immigration benefit/relief—are not unduly penalized and barred from pursuing the American dream.**