



AN OVERVIEW OF THE SENATE JUDICIARY COMMITTEE IMMIGRATION BILL

March 30, 2006

This high-level overview is based on the original Chairman's mark, the text of amendments as filed, and our own understanding of modifications made during the Committee process. Once the final bill text is available, we will make any adjustments necessary.

TITLE ONE¹

This title focuses on border enforcement, technology, communication and coordination. Provisions include:

- Increasing border patrol agents (12,000 over five years), interior agents (5,000 over five years), inspectors (1,250 over five years), and agents dedicated to combating alien smuggling (1,000 over five years)
- Mandatory detention for undocumented aliens arriving at or between a port of entry, with an exemption for Cubans; an increase in detention space by 20 new facilities/10,000 beds
- Mandating the expansion of expedited removal to non-Mexican aliens caught within 100 miles of the border who cannot show they were in the U.S. for more than 14 days
- Technology enhancements including implementation of a "virtual fence" along our international borders and improved two-way communications between DHS and state, local, and tribal law enforcement; access to military equipment to police the border
- Construction of additional roads, facilities, barriers, checkpoints, and ports of entry and improvements to existing infrastructure
- Authorizing additional fencing and repairs to physical barriers in certain areas of Arizona; authorizing a study of the need for additional physical barriers
- Creating new criminal penalties for construction, financing, and use of illegal tunnels at the border
- Requiring a national strategy for border security; making efforts to improve communication with federal, state, local, and international partners on border security and alien smuggling
- Training for border patrol agents on fraudulent documents; granting access to the Forensic Document Laboratory; improving the integrity of all immigration documents by adding machine-readable and biometric technologies
- Requiring DHS to submit a timeline for implementing US-VISIT exit controls
- Integrating FBI and DHS fingerprint databases and other border security screening systems; expanding the classes of individuals fingerprinted as they enter and exit the US; requiring 10-print biometrics as opposed to 2-print; creating a new ground of inadmissibility for aliens that fail to provide biometrics
- Enhanced criminal penalties for evading immigration officers and money laundering
- Authorizing DHS to deny admission to aliens from countries who have delayed or denied acceptance of their citizens ordered deported by the US

¹ Because the final text of the bill is unavailable, some of the enforcement provisions added as amendments may be listed in the wrong title in this document. Also, this list is not exhaustive.

TITLE TWO

This title includes interior enforcement provisions, as well as dramatic new restrictions on legal immigrants, asylum-seekers, and others. Certain of these provisions originated in H.R. 4437 and are highly controversial. Title two provisions include:

- Expanded authority for DHS to deny entry or deport aliens under security and terrorist grounds or for having used fraudulent documents
- Broadening existing alien smuggling definitions to include organizations and individuals who assist undocumented immigrants, while providing for a humanitarian exemption
- Application of the “aggravated felony” definition, with its extreme immigration consequences, to additional offenses (including smuggling and other immigration crimes, accessory roles for a broad range of offenses, and document fraud offenses)
- Creating a new bar to asylum for real refugees who have been convicted of a so-called “aggravated felony” (which may be a crime that is neither “aggravated” nor a “felony” under criminal law)
- Increased criminal penalties and immigration bars for individuals labeled members of a gang
- Increased criminal sentences for repeat illegal entrants, individuals who re-entered the U.S. after being deported, failure to depart after being ordered deported, and smuggling offenses
- Expanding the Institutional Removal Program to put removable aliens into deportation proceedings while they are completing their criminal sentences
- Clarifying that individuals with Temporary Protected Status can be detained or deported for crimes or associations with gangs and terrorism; permitting DHS to terminate TPS at any time
- Authorizing prolonged or indefinite detention of certain individuals who cannot be removed for reasons beyond their control, or who are in deportation proceedings
- Making a host of document fraud offenses both grounds of inadmissibility/deportability and “aggravated felonies” (with extreme immigration consequences); immigration consequences attach whether the individual was convicted of a crime by a court or simply admitted to having used fake documents or incorrectly filled out a document like an I-9 form; these provisions would apply to the individuals legalized in later titles of the bill as well as legal immigrants, U.S. citizens, and others who happen to make an incorrect statement on an immigration application or other document
- Expanded criminal penalties and immigration consequences for legal immigrants and nonimmigrants’ failure to timely file a change of address card with DHS
- Clarifying the “inherent authority” of state and local police to assist in enforcing criminal immigration laws
- Compelling state and local police to enforce immigration laws by loading the National Crime Information Center with the names of millions of immigration law violators, including some pursuing lawful status like asylum or VAWA relief
- Barring the granting of an immigration benefit until all background checks are completed
- Reimbursing states and local governments for costs associated with detaining criminal aliens or additional immigration enforcement duties conferred under a Memorandum of Understanding negotiated with DHS; requiring DHS to negotiate at least one such MOU in every state

- Restricting an alien’s ability to demonstrate “good moral character” for citizenship and some immigration benefit purposes; allowing the government to use secret evidence in making these determinations; making it clear that the adjudicator has complete discretion to determine good moral character and to go beyond the current five-year “look back”; categorically barring new classes of aliens from demonstrating good moral character in order to obtain citizenship
- Limiting judicial review of citizenship denials
- Speeding up the length of time between a final deportation order or agreement to voluntarily depart and the alien’s exit from the US
- Requiring federal prosecutors to determine the immigration status of each defendant and report this to the court
- Prohibiting U.S. citizens and Legal Permanent Residents from sponsoring a relative to immigrate if they have been convicted of certain crimes or are in any administrative or judicial proceeding (civil or criminal) that could affect their status as a Naturalized U.S. citizen or LPR
- Prohibiting the sale or possession of firearms to new categories of aliens
- Expanding the statute of limitations for immigration, naturalization, and peonage offenses
- Expanding the authority of the Diplomatic Security Services
- Reimbursing Native American tribes for law enforcement, health care, environmental damage, and other costs related to their location along our international borders
- Making three or more DUI convictions an “aggravated felony,” carrying the immigration consequences of mandatory detention and deportation with no access to relief
- Pre-empting state or local laws that require businesses to construct and maintain day laborer sites

TITLE THREE

This title focuses on eliminating the employment of unauthorized aliens. It was not substantively addressed during the Committee mark-up because of concurrent jurisdiction claims made by the Finance Committee. Senator Grassley is reportedly working on an amendment that could substantially revise some of these provisions. As reported out, though, the Senate Judiciary Committee bill includes the following provisions:

- Expanding the current work authorization verification program to all employers within five years, and phasing the system in as the Electronic Employment Verification System (EEVS)
- Reducing the types of documents an individual could use to establish work authorization, but clarifying that the bill does not authorize the issuance or use of a national ID card
- Requiring employers to investigate Social Security “no match” letters and keep documentation
- Increasing 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 in this title
- Prohibiting employers from avoiding liability for unlawful hiring of unauthorized aliens through a subcontractor
- Protecting from liability anyone who has complied with the EEVS and relied on its accuracy in good faith
- Prohibiting use of the EEVS for any purpose other than the administration or enforcement of immigration, Social Security, and criminal laws

- Giving DHS the authority to modify requirements, set fees, and delay or waive participation in the EEVS
- Establishing a procedure for filing complaints and investigating potential violations of the EEVS
- Barring noncompliant employers from receiving federal contracts
- Increasing DHS agents dedicated to investigating unlawful employment of aliens by 2,000 and immigration fraud detection by 1,000

TITLE FOUR

This title was amended to include the future worker program from S. 1033, the Secure America and Orderly Immigration Act (McCain-Kennedy), with additional worker protections. The provisions:

- Create a new temporary H-2C worker visa which:
 - Is valid for 3 years, and can be renewed once for a total of 6 years, after which the worker must return home or have a green card application pending
 - Provides substantial labor protections, including wage protections, extension of the right to join unions, prohibitions on hiring H-2C workers during union strikes or lockouts, among others
 - Is “portable” (visa holder can work for any employer in any industry any time)
 - Allows the worker to travel abroad and to bring his family members to the US
- To qualify the individual must:
 - Have an offer of employment
 - Undergo medical, security, and background checks
 - Pay an application fee and \$500 surcharge
- The employer must have exhausted significant avenues for locating a U.S. worker before applying for an H-2C worker, keep extensive documentation about that search, and offer the job at prevailing wage
- The H-2C visa holder may apply for legal permanent residency after one year with an employer sponsor, or after four years on his own as long as he meets English language and civics learning requirements and otherwise qualifies for that status
- If visa holder loses his job, he will have 60 days to find new employment or leave the US
- The program is capped at 400,000 visas to start, but the ceiling will decrease or increase according to market conditions
- In addition to a worker-friendly design to the program, which gives H-2C workers the right to “vote with their feet” and to apply for legal permanent residency without relying on an employer, the title includes significant labor protections:
 - Requiring that H-2C workers receive the prevailing wage
 - Ensuring that H-2C workers have the same rights as similarly-situated US workers under applicable federal, state, and local labor, employment, and tax laws, and cannot be asked to waive those rights
 - Prohibiting the treatment of H-2C workers as independent contractors, as well as the hiring of these workers as replacement workers during a union strike or lockout
 - Prohibiting employers or labor contractors from retaliating or discriminating against a complaining worker in a wide variety of circumstances

- Providing employment protection to H-2B and H-2C workers who file nonfrivolous labor complaints
- Registering and monitoring labor recruiters; requiring them to fully disclose information about the job and expectations; prohibiting their charging fees to the workers outside of reasonable travel costs
- Providing remedies for addressing complaints about labor contractor violations
- Setting forth an administrative process for workers harmed by H-2C program violations to seek remedies and damages (including both civil and criminal penalties)
- Establishing a task force to review the H-2C program and make improvements
- Significantly increasing Department of Labor audit and investigatory resources (channeling 15% of the fines and fees paid by H-2C workers to labor enforcement)

TITLE FIVE

This title was not modified significantly during the Committee process. It includes provisions:

- Ending the counting of Immediate Relatives of U.S. citizens against the annual cap on family-based immigrants; redistributing immigrant visas among the various family-based preference categories
- Increasing the number of employment-based immigrant visas from 140,000 to 290,000 and redistributing the visas among the various employment-based preference categories (including increasing the number of visas available to “essential workers” from 10,000 to 87,000); and no longer counting spouses and children of employment-based immigrants against the visa limits
- Permitting immigrant visa numbers that go unused because of processing delays to apply to a subsequent fiscal year
- Slightly expanding the per-country limits to help clear out backlogs from countries like Mexico, China, and India

TITLE SIX

This title was amended to include an earned legalization program along the lines of S. 1033, the Secure America and Orderly Immigration Act (McCain-Kennedy), with some changes. The provisions include:

- Permitting immigrants to apply for conditional nonimmigrant status if they:
 - Were present in the U.S. as of 1/7/04 and employed before and after that date
 - Show evidence of employment
 - Undergo security and background checks and demonstrate admissibility
 - Pay an application fee and \$1000 fine
- Certain immigrants in removal proceedings or subject to final removal orders or voluntary departure agreements will have an opportunity to apply for a conditional nonimmigrant visa
- A limited number of inadmissibility grounds related to unlawful status would be waived; others could be waived for humanitarian reasons. Criminal or security-related grounds of inadmissibility could not be waived
- Spouses and children could apply for legal status as derivatives on the primary application, whether currently inside the US or following to join the applicant

- The title provides some administrative and judicial review for conditional nonimmigrant visa applicants, as well as confidentiality protections for information they provide
- Applicants would receive work authorization, travel permission, and protection from deportation until their cases are decided
- A successful applicant will receive a six-year nonimmigrant visa that is not renewable, but fully portable to any job in any industry. At the end of the six years, the immigrant will have to either be in the pipeline for a green card or return home. Workers can apply for another nonimmigrant classification after six years, as the change of status bar appears to apply only during the six-year period
- During the six-year time period, conditional nonimmigrant visa holders cannot apply to change their status or obtain legal permanent residency through different channels
- Conditional nonimmigrant workers can apply for legal permanent residency after six years, provided they meet additional requirements. These green cards will not be counted against the statutory caps on immigrant visas. An applicant must:
 - Meet additional employment requirements
 - Undergo security and background checks as well as a medical exam, and show admissibility
 - Show that he meets the English and civics learning requirements
 - Show proof he has satisfied outstanding tax obligations
 - Register for the selective service (if applicable)
 - Pay an additional application fee and another \$1000 fine (if 21 or over)
- Spouses and children may apply for adjustment to permanent resident status as derivatives
- To ensure fairness, conditional nonimmigrant workers cannot actually adjust their status to LPR until applicants waiting for immigrant visas as of date of enactment are processed
- Spouses and children who are victims of domestic abuse can continue their applications for conditional nonimmigrant status (or if eligible, apply for such status) or legal permanent residency independent of the primary applicant
- Students may apply for status on their own (if they meet the other criteria) by substituting education at a secondary school or institute of higher learning for the employment requirements
- The title includes certain employer protections. Employers of undocumented immigrants applying for status will not be penalized for having hired them as an undocumented worker. They will also be exempt from civil or criminal tax liability if payments were not made for the workers

Miscellaneous Provisions

As amended, the Senate Judiciary Committee bill includes two long-standing bills well-known to observers of the immigration debate.

AgJOBS (S. 359)

This is the landmark legislation crafted by farmworker and agribusiness advocates and their allies in Congress to deal with the crisis in the US agriculture workforce. A summary of AgJOBS and other materials can be found at <http://www.fwjjustice.org/LEGISLAT.HTM>.

The legislation was included in the Senate Judiciary Committee bill with some changes. They are as follows:²

- To enter the earned legalization program, farmworkers will have to show that they performed at least 150 days of agricultural work in the U.S. during the 24 month period ending December 31, 2005. (This is NOT a per-year requirement; it is a total of 150 days.)
- Once the person shows eligibility, he or she gets a "blue card" to demonstrate temporary resident status. Previously, there was no special card or color
- Once the farmworker obtains a blue card, the farmworker's spouse and minor children obtain a temporary resident status and the spouse gets work authorization. These family members may also then travel across the U.S. border
- To earn a green card, the farmworkers must perform agricultural work for at least 100 work days per year for 5 years, OR perform 150 days per year for 3 years. Participants may work outside agriculture but only if they are continuing to meet the annual agricultural work requirement
- Disqualification will occur due to conviction of a felony or 3 misdemeanors or a single crime that involves bodily injury or injury to property in excess of \$500
- In addition to an application fee, farmworkers will have to pay a fine of \$100 upon obtaining a blue card
- To obtain a green card the farmworkers will pay a fine of \$400 and must be current on their income taxes
- The earned legalization program has a cap of 1.5 million
- The H-2A temporary foreign worker program will allow employers in the dairy industry to hire workers even when they are year-round workers

DREAM Act (S. 2075)

This legislation is also well-known to those following the immigration debate. It provides undocumented immigrant students an opportunity to adjust status and attend college as a legal resident. It was approved twice by the Senate Judiciary Committee, but was never scheduled for floor action. The DREAM Act was added to the Senate Judiciary Committee bill in its current form. Summaries and other information about DREAM can be found at:
<http://www.nilc.org/immlawpolicy/DREAM/index.htm>.

Other Provisions of Note

The Senate Judiciary Committee bill was also amended to include the Widows and Orphans Act (S. 644), which creates a new nonimmigrant visa category for certain children and women at risk of harm, as well as other visa reforms related to special case workers and students. A full section-by-section summary of the legislation will be available shortly.

Title seven of the original Chairman's mark, dealing with immigration court structures, policies, and federal appeals, was deleted pending further consideration.

² The Farmworker Justice Fund provided this analysis.