



The Sensenbrenner-King Bill's “Greatest Misses”

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In December 2005, the House of Representatives approved a massive immigration bill drafted by House Judiciary Chairman James Sensenbrenner (R-WI) and Homeland Security Chairman Peter King (R-NY). If enacted, the *Border Protection, Anti-Terrorism, and Illegal Immigration Control Act* (H.R. 4437) would harm the lives of refugees, legal immigrants and visitors, citizens and citizens-in-waiting, and business owners, without fixing unauthorized migration. It is a complete failure for what it contains as well as what it does not: **any effective solution for bringing the eleven million undocumented immigrants in this country out of the shadows, as well as realistic channels for future legal migration.** The Sensenbrenner-King “solution” to our nation’s broken immigration system is:

Make any relative, employer, coworker, clergyman, lawyer, or friend of an undocumented immigrant into an “alien smuggler” and a criminal. The legislation’s “smuggling” provisions go way beyond any common sense definition of a “smuggler,” and include average Americans going about their business. For example, it makes criminals out of the:

- Soccer mom who drives her neighbor to the grocery store, or has a live-in nanny;
- Counselor who assists victims of domestic violence and their children;
- Landscaper who drives his workers to jobs; and
- Church group that provides a bowl of soup, shelter, or other assistance to community members.

One can be found guilty of a “smuggling” crime even if she did not know the person was undocumented. While it may be unlikely that these laws would be applied across the board, such provisions are rife for selective enforcement. For example, if an employer wants to undercut a union organizing drive, or an incumbent mayor wants to discredit an opponent, they could easily contact the local authorities and trigger an investigation into the target’s “associations” with people who may be undocumented.

These provisions ensure misuse of law enforcement resources by going after innocent behavior, instead of focusing on real human smugglers who endanger the lives and property of all who cross their paths.

Make eleven million undocumented immigrants—and legal visitors with temporary status problems—into criminals permanently barred from immigration status. Currently, unauthorized immigrants are in violation of immigration law and subject to deportation. This bill would make unlawful status not only an immigration violation, but a federal crime and an “aggravated felony” under immigration law, meaning that:

- They could be charged with this new crime and, if convicted, permanently barred from ever obtaining immigration status (including the President’s temporary worker program);
- Criminals would be made of the student visa holder who drops a class but is looking for another one, the high tech worker who loses her job and takes too long to find a new employer sponsor, and the businessman whose return flight is cancelled and has to remain in the U.S. an extra day;
- Three million U.S.-citizen children could face separation from parents, and hundreds of thousands of legal resident and U.S.-citizen adults in “mixed status” families would also be harmed;
- Prosecutors, judges, juries, detention space, and court-appointed counsel would all have to be dramatically scaled up to handle potential trials for more than eleven million “violators”;

- Or, as it is unlikely all of these resources would be dedicated to prosecuting every single violator, the provisions could be selectively enforced. Police could demand the “papers” of anyone who looks or sounds foreign, leading to civil rights abuses of legal residents and U.S. citizens; and
- Most importantly, it will not fix the problem! Even the bill’s sponsors do not expect the provision to be fully enforced, so it will not eliminate unauthorized immigration. It is just a distraction from real reform.

Make it harder for legal permanent residents to become citizens. Legal immigrants who have waited patiently for the chance to become U.S. citizens may have their dreams dashed by this bill. It would:

- Allow government bureaucrats to deny citizenship to any legal permanent resident on a whim;
- Permit the government to keep the reason for that denial a secret;
- Eliminate a judge’s power to override a mistake DHS made in denying citizenship; and
- Change the rules of the game so that long-time legal permanent residents can be barred from citizenship and deported, even if they were never convicted of a crime or it was a minor offense from decades ago.

When it comes to something as important as citizenship, the system must be designed in a way that the rules are clear and fair, and there are checks in the system to correct agency errors. This bill fails on all accounts.

Turn state and local police into immigration agents. The bill includes the *CLEAR Act* (H.R. 3137), a misguided proposal that coerces state and local police into enforcing civil immigration laws. The *CLEAR Act* is opposed by scores of law enforcement departments because its premise, turning cops into immigration agents, undermines effective community policing. The bill also attempts to penalize states and localities that protect the confidentiality of immigrant crime victims and witnesses.

The effect of these provisions will be reduced public safety, as immigrants will fear contact with state or local police officers—even to report crimes or serve as witnesses. It will also lead to racial profiling, as members of certain ethnic groups will come under greater scrutiny by police attempting to enforce immigration law.

Slam the door shut on real refugees seeking safety within our borders. Picking up where the REAL ID Act left off, the bill overreaches dramatically when it comes to policies affecting refugees, trafficking victims, and others seeking safety within the U.S. For example, the bill would:

- Make more legitimate refugees who had to use fraudulent documents to escape persecution into “aggravated felons,” requiring their mandatory detention and life-time banishment from the U.S.;
- Further expand “expedited removal,” a practice the U.S. Commission on International Religious Freedom has denounced because it leads to mistakes returning real refugees to their persecutors; and
- Permit more deportations of deserving asylum applicants who have simply “omitted” a piece of information in their applications, no matter how minor, unintended, or irrelevant.

Refugees, trafficked persons, and other crime victims often cannot get proper U.S. visas or perfect their requests for asylum before they must flee. Knowing the U.S. to be a fair country, they come asking for a safe haven, but since 1996 our country has begun closing the door on real refugees. With this new bill, we are essentially locking the door and throwing away the key.

Create a second-class justice system for immigrants. This bill further erodes the system of checks and balances when it comes to immigration matters. It also undermines basic principles of fairness by denying individuals a chance to show that they should not be jailed. For example:

- Ensuring access to a judge who can review a DHS decision and find that the Department acted in error or misapplied the law is a basic right. This bill eliminates these checks on executive power, an outrageous move when the stakes are as high as deportation;
- By applying blanket detention policies, the bill eliminates the basic role of a judge to make an individualized decision about whether or not a person should be jailed or subject to supervised release, based on the person's equities, circumstances, and flight risk. It turns immigration judges into "rubber stamps" instead of, well, judges;
- The bill stacks the deck against immigrants even further, by imposing unusual standards that would not fly in any other court of law, and denying immigrants access to independent court review; and
- It expands mandatory deportation and denial of immigration status to asylum-seekers, workers, and others for doing what they needed to to survive—like using a neighbor's passport to flee an oppressor, or a friend's social security number to work to feed their family.

These and many other provisions build on the flawed 1996 laws to deny immigrants judicial review, eliminate the discretion of judges when review is permitted, apply changes to the law retroactively, and expand punishments that simply do not fit the crime. Some of the 1996 excesses have been reversed or dialed back by courts—including the Supreme Court—but the Sensenbrenner bill attempts to legislate over those Constitutional questions.

Require employers to verify workers' legal status, without providing access to legal workers through immigration reform. The bill proposes rapid-fire expansion of an employment authorization verification system, from 5,000 to 7 million employers within 2 years, and demands that employers use it retroactively. It builds off of an existing flawed database, lacking important privacy protections. The effect of the bill is essentially: shoot first, and aim later.

These provisions are just some of the most outrageous mandates in a 257-page bill that was introduced and passed in just 10 days, with no time for reasonable debate or constructive amendments. The solution to the crisis of our immigration system is not turning eleven million people into criminals and putting up roadblocks to citizenship for legal immigrants. It is an honest look at the reasons why we have illegal migration, and building legal channels wide enough for needed workers and close relatives.

A model for how to do this is the bipartisan *Secure America and Orderly Immigration Act* (H.R. 2330/S. 1033), a bill sponsored by Representatives Kolbe (R-AZ), Flake (R-AZ), and Gutiérrez (D-IL) and Senators McCain (R-AZ) and Kennedy (D-MA), among others. Similar provisions are included in a package of bills by Senator Hagel (R-NE) (S. 1916, 1917, 1918, and 1919). For more on *comprehensive* reform, visit: <http://www.immigrationforum.org/DesktopDefault.aspx?tabid=732>.

For resources on the Sensenbrenner-King bill, including analysis of how Congress has ratcheted up immigration enforcement over the last twenty years but failed to fix the system, visit: <http://www.immigrationforum.org/DesktopDefault.aspx?tabid=777>.