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Undeniably Amnesty: The Cornerstone of the Senate's Immigration Proposal

Matthew Spalding, Ph.D.

Everyone—from President Bush to his critics to Ted Kennedy—is dead set against “amnesty,” and yet the word overshadows all else in the immigration debate. Despite its proponents’ claims to the contrary, amnesty is the cornerstone of the Senate’s immigration bill. Indeed, this legislation, with its many provisions, *guarantees* one thing only: that a population of individuals defined solely on the basis of their illegal status will receive legal status and a privileged path to permanent residency and citizenship. Everything else in the bill—border security, worker verification, the temporary worker plan, a new merit-based immigration system—would be contingent on future political decisions. A few amendments around the edges will not change this overriding fact.

What Is Amnesty? Amnesty, from the same Greek root as “amnesia,” forgives past crimes and removes them from the record for future purposes. In the context of immigration, amnesty is commonly defined as granting legal status to a group of individuals unlawfully present in a country.

Amnesty provides a simple, powerful, and undeniable benefit to the recipient: It overlooks the alien’s illegal entry and ongoing illegal presence and creates a new legal status that allows the recipient to live and work in the country.

The textbook example of such an amnesty is the Immigration Reform and Control Act of 1986. The act’s core provision gave amnesty to those who could establish that they had resided illegally in the United States continuously for five years by granting

them temporary resident status, which in 18 months was adjustable to permanent residency, which led to citizenship five years later.

Look up “amnesty” in *Black’s Law Dictionary*, and it says this: “The 1986 Immigration Reform and Control Act provided *amnesty* for undocumented aliens already in the country.”

Note that the 1986 law’s path to citizenship was not automatic. The legislation stipulated several requirements to receive amnesty, including payment of application fees, acquisition of English-language skills, understanding of American civics, a medical exam, and registration for military service. Individuals convicted of a felony or three misdemeanors were ineligible. Despite these requirements, all agree that the 1986 law amounted to an amnesty.

An Amnesty Checklist. The Secure Borders, Economic Opportunity and Immigration Reform Act of 2007 resembles the 1986 amnesty in several ways. Like that law, it would grant amnesty to individuals unlawfully present in the United States. That its effect would be “amnesty,” which its proponents deny, is proven by its provisions:

- **Only illegal aliens are eligible.** Title VI, euphemistically entitled “Nonimmigrants in the United

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(202) 546-4400 • heritage.org

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States Previously in Unlawful Status,” creates a new “Z” visa exclusively for illegal aliens, granting legal status to those who have willfully violated U.S. laws and denying that benefit to law-abiding aliens who have played by the rules. Only *illegal* aliens can qualify. (Section 601 (c)(1))

- **Legal status is immediate.** Section 1 (a) allows probationary Z visas to be issued immediately after enactment, and Section 601 (f)(2) prohibits the federal government from waiting more than 180 days after enactment to begin issuing probationary Z visas. These probationary visas are nearly as good as non-probationary Z visas, giving the alien lawful status, protection from deportation, authorization to work, and the ability to exit and reenter the country with advance permission. (Section 601 (h)(1))
- **Immigration laws are set aside.** Before anyone even applies for a probationary Z visa, the legislation would set aside the immigration laws that currently criminalize the presence of illegal aliens. The bill waives compliance with several laws as a condition for eligibility for the amnesty, including those concerning illegal entry, failure to appear for a removal proceeding, fraud in obtaining a documentation to enter the United States, falsely claiming citizenship, violating terms of a student visa, failure to obtain valid immigration documents, unlawful presence for more than one year, and reentry after having been ordered removed. (Section 601 (d)(2)(A))
- **Eligibility leads to permanent residence.** Probationary Z visas could be valid for years, depending on when the government begins issuing non-probationary Z visas (Section 601 (h)(4)). The Z visa can be renewed every four years indefinitely (Section 601 (k)(2)). No later than 8 years after enactment, the Secretary of Homeland Security must determine the number of Z visa holders who are eligible for legal permanent residence (LPR) and grant LPR status to all such persons over the following five years at a rate of 20 percent per year. (Section 503 (f)(2) and Section 501 (b))
- **Amnesty is unlimited.** The bill grants legal status to virtually all of the 12 million to 20 million illegal aliens who are in the country today, and

there is no cap on the total number of illegal aliens who could receive Z visa status. Expect a mass influx once the 12-month period for accepting Z visa applications begins, because the legislation is an open invitation for those intent on U.S. residence to sneak in and present two fraudulent documents indicating that they were here before the beginning of the year.

There should be no doubt that the current legislative proposal is an amnesty. Like the amnesty bill of 1986, the current Senate proposal would grant legal status to those who have resided illegally in the United States and place them on a privileged path to citizenship. As in 1986, these individuals must pay fees and fines and meet certain conditions. And once again, the granting of legal status is still “amnesty” even if it is conditional and not automatic or does not necessarily end in citizenship.

In short, the bill’s conditions and requirements do not turn amnesty into “earned” legalization or citizenship.

Requiring a “touchback” (meaning a visit to a consulate outside of the United States) after illegal aliens have received a legal status that gives them a guaranteed return to the United States does not alter this conclusion. Such a requirement does nothing of substance other than impose a minor additional burden on those receiving amnesty.

That the Senate bill would grant amnesty is underscored by the very breadth and generosity of that grant. To initially qualify for a Z visa, an illegal alien need only have a job (or be the parent, spouse, or child of someone with a job) and provide two documents suggesting that he or she was in the country before January 1, 2007, and has remained in the country since then. A bank statement, pay stub, or similarly forgeable record will do. Also acceptable under the legislation is a sworn affidavit from a non-relative (Section 601 (i)(2)). Further, if an Immigration and Customs Enforcement agent apprehends aliens who appear to be eligible for the Z visa, the agent cannot detain them (Sections 601 (h)(1, 5)). Likewise, if an alien in the removal process is “prima facie eligible” for the Z visa, an immigration judge must close any proceedings against the alien and offer the alien an opportunity to apply for amnesty (Section 601(h)(6)).

A Better Path. Those who enter, remain, and work in the U.S. illegally are in ongoing and extensive violation of its immigration laws. Forgiving or condoning such violations by granting amnesty increases the likelihood of further illegal conduct. The failure to enforce immigration laws is deeply unfair to the millions who obey the law and abide by the rules to enter the country legally. And disregarding the open and intentional violation of the law—especially on such a massive scale—ultimately undermines the rule of law.

The sensible way to resolve the problem of a huge illegal population without granting amnesty is to insist that individuals who are unlawfully present in the U.S. return to their countries of origin and then apply, in line and on par with other applicants, for legal entry. This pathway would allow illegal aliens to apply for legal entry to the United States as lawful visitors, temporary workers, or legal residents without partiality or prejudice—or fees and penalties.

A practical program for repatriating those who are illegally present in the United States is the only viable option that offers a fair and reasonable alternative to the objectionable extremes of blanket amnesty and forced deportation. It is also the best way to avoid having to confront the problem of a huge, illegally present population yet again in the future.

Making repatriation attractive, along with serious enforcement of immigration laws and controlling the illegal inflow at the border, would significantly reduce the current population of unlawfully present persons. It is the only way to resolve this seemingly intractable situation in accord with the principles of governance and the rule of law.

—*Matthew Spalding, Ph.D., is Director of the B. Kenneth Simon Center for American Studies at The Heritage Foundation.*