

Border Security, Economic Opportunity, and Immigration Modernization Act of 2013

Senators Schumer, McCain, Menendez, Rubio, Durbin, Graham, Bennet and Flake

Title I. Border Security

This Title provides for border security measures that will achieve and maintain effective control in high risk areas of the Southern border.

- **Border Plan:** Stage one requires the DHS Secretary to develop a Comprehensive Border Security Strategy and Southern Border Fencing Strategy within six months before the registration period for Registered Provisional Immigrant status (RPI) begins. These strategies must be designed to achieve persistent surveillance of the border and a 90% effectiveness rate for apprehensions and returns in high risk border sectors. This bill appropriates \$3 billion for this plan which will include technology, personnel and other resources. The Secretary's plan must be operational before any RPIs may apply for adjustment of status.
- **Triggers:** In addition, the Secretary must develop and implement a fencing plan (\$1.5 billion); Everify must be mandatory and operational; and biographic entry-exit at air and seaports must be implemented before RPIs may adjust to permanent residence.
- **Southwest Governors Commission:** After five years, if the specified goals of 90% effectiveness and persistent surveillance have not been met, a Southern Border Security Commission will be established to make further recommendations for achieving these targets. The Commission will recommend up to \$2 billion in additional DHS spending that would be available to achieve the border security goals if they have not yet been met.
- **Additional Resources:** To further ensure completion of these targets, Customs and Border Patrol personnel and resources will be increased, additional funding for border prosecutions in the Tucson sector are funded, and the authority of the National Guard to assist in border security operations is codified.
- **Civil Rights:** To protect the integrity of the system, additional resources and training will be devoted to implementing a DHS-wide use of force policy and associated training in appropriate use of force, individual rights, and sensitivity to cultural and environmental impact of federal operations on border communities. A Border Oversight Taskforce is established to take testimony and conduct hearings in order to review and recommend changes to existing border policies. The current duties of the USCIS Ombudsman's office will be expanded to encompass all DHS immigration functions. Racial profiling guidance will be implemented.

Title II. Legalization (Registered Provisional Immigrant program) and Legal Immigration

This title provides a path to citizenship for the 11.5 million undocumented workers in the United States. It establishes a new framework for future legal immigration by revamping the current family and employment based systems and creating two additional "merit-based systems."

SubPart A. Creation of Registered Provisional Immigrant program

- **Registration Requirements:** Immigrants who entered the United States before December 31, 2011 and have been physically present in the U.S. since that time will be eligible to apply for Registered Provisional Immigrant (RPI) status provided they pass a background check, have not been convicted of serious criminal activity, pay any assessed tax liability, pay appropriate fees, and a \$500 fine.

- **Initial registration** will be valid for six years. It provides for work and travel authorization, and includes spouses and children in the United States.
- **Renewal:** RPIs applying for renewal will be subject to a new background check, payment of processing fees, payment of taxes and a \$500 fine payable in installments. RPIs must submit evidence of having been regularly employed while meeting public charge requirements or having income and resources at 100% of the poverty level.
- **Adjustment of Status to Permanent Residency:** At the end of ten years, RPIs may apply for adjustment of status, provided that they can continue to demonstrate they are admissible; pay a \$1000 fine per adult; prove they are learning English; and pay their taxes. In addition, they must show they have complied with the work requirement or demonstrate income and resources at 125% of Federal Poverty Level. Any individuals present in the U.S. for 10 years in lawful status can adjust status including RPIs under the revamped legal immigration system. RPIs may not adjust status until the family and employment backlogs are cleared and the border security triggers are met. RPIs may apply for naturalization after a three year wait, making the total path to citizenship a 13 year wait.
- **Timeline:** There is an initial 12 month period for regulations. Then there is a one year initial application period which can be extended for up to one year by the Secretary.
- **DREAM Act:** Individuals who entered the United States before the age of 16 and who have completed high school in the U.S. may register for RPI status through the DREAM Act. There is no age cap for the program. Five years after registration, DREAM RPIs may apply for adjustment of status; their time in RPI status will count towards eligibility for naturalization, allowing them to become citizens immediately after receiving their green card. Children under age 16 have a five year path to citizenship and are exempted from certain requirements. Heightens child welfare protections to ensure parental rights are not terminated on the basis of a parent's immigration status alone.
- **Agricultural program:** Undocumented farm workers who can demonstrate a minimum of 100 work days or 863 hours in the two years prior to the date of enactment would be eligible for an Agricultural Card. Workers who work at least 100 days a year for five years or workers who perform at least 150 days a year for three years can adjust status to permanent residency. In addition, agricultural workers show that they have paid all taxes, have not been convicted of any serious crime, and pay a \$400 fine are eligible to adjust to legal permanent resident status.
- **Integration:** Creates an Office of New Americans, a New Americans taskforce and additional integration initiatives. Provides funding for legalization-related programming.

SubPart B. Legal Immigration Reforms

- **New Merit-Based System:** Creates a "Track One" merit based visa which will initially allocate 120,000 visas annually based on a points system. Equally weighted points will be awarded for factors such as education, employment, and length of residence in the US, with the possibility of increasing the allotment by 5% (capped at 250,000) in any year where unemployment is under 8.5%. Half of the merit visas will be set aside for high skilled and half for lower skilled workers.
- **A new "Track Two" merit-based system** is created to adjust the status of individuals lawfully present in the U.S. for over ten years with work authorization. The Secretary is permitted to clear the backlog of family and employment based petitions that have been pending for more than 5 years during an eight year period following enactment.

- **Lawful Permanent Residents’ spouses and children become “immediate relatives” and are uncapped:** Current family based categories will be revised to permit the spouses and children of lawful permanent residents to immigrate immediately.
- **Additional changes to the current family system:** The current sibling category will be eliminated 18 months after enactment, but the backlog reduction program will include processing of all sibling petitions submitted before expiration of the program and US citizens can petition for the sibling for up to 18 months after enactment. The third family preference category (adult married children of US citizens) has an age cap of 31 beginning 18 months after enactment.
- **New Family “V” Visa:** Creates a new nonimmigrant visa for families with approved petitions to work and live in the U.S. while waiting for their green card. Allows other family members including siblings to visit the U.S. for up to 60 days per year.
- **Employment-Based Reforms:** Spouses and children of employment based visa applicants, STEM graduates with doctoral degrees, certain other professionals, and certain foreign doctors are exempt from the employment visa cap. The cap on low-skilled workers is raised.
- **Additional Backlog Reduction and Improvements:** Additional provisions to streamline processing and reduce backlogs including elimination of employment based country caps, increase in family based country limits, and recapture of unused visa numbers are authorized. Permanently authorizes popular programs for foreign doctor (Conrad-30), religious worker recruitment; and EB-5 investors. Includes numerous other technical fixes to improve and streamline current visa programs, many of which were included in the Menendez/Honda Reuniting Families Act (additional protections for stepchildren, widows, and other family members.)
- **Judicial Discretion:** Expands availability of waivers for unlawful presence, and expands authority of immigration judges and DHS to waive removal on humanitarian grounds.

Title Three: Interior Enforcement

This title mandates E-Verify, provides additional worker protections, reforms the immigration court system and provides additional measures related to interior enforcement.

- **Five year phase-in of mandatory E-Verify:** Establishes a phased-in expansion of current electronic employment verification system (E-verify) to cover all employers within a five year period, beginning with federal contractors and critical infrastructure employers. Requires identity verification through enhanced fraud-proof work authorization and green cards. Specifically prohibits creation of a national ID card.
- **Anti-fraud measures:** Expands ability to protect against identity theft of Social Security numbers by allowing employees to block their social security number and gives employees access to personal E-verify history. It provides for an expansion of the photo identification mechanism as component of E-verify and encourages states to provide photos to DHS.
- **Due Process:** Expands due process protections for employees to ensure that legal workers are not prevented from working due to errors in the system or because of employer negligence or misconduct. Provides for back-pay if an employee loses work unfairly due to system or employer error. Provides a stay of termination of employment to give the worker time to correct any errors in the system.
- **Worker Protections:** Includes protections for employers and employees, including pre-emption of state and local work authorization laws, expansion of U visas in employer abuse situations (POWER ACT), creation of mandatory exit verification system, and program funding. The bill also cracks down on labor recruitment abuse.

- **Refugee/Asylum Issues:** Streamlines processing in refugee and asylum cases by eliminating one year asylum filing deadline, eliminating family reunification barriers for asylees and refugees, authorizing streamlined processing of certain high risk refugee groups, authorizing asylum officers to grant asylum for eligible applicants during credible fear interviews, and permits qualified stateless individuals to apply for lawful permanent resident status.
- **Immigration Court Improvements:** Authorizes increase in immigration court personnel, additional resources, and more training for judges and other staff, access to counsel for vulnerable populations to improve efficiency of courts, permanently and codifies Board of Immigration Appeals and legal orientation programs.
- **Interior Enforcement:** Tightens certain grounds of inadmissibility relating to document and passport fraud, driving while intoxicated following three convictions, conviction for gang related activities, convictions related to domestic violence, child abuse, stalking, violation of protection orders and failing to register as a sex offender. Prohibits and or increases penalties for abusive smuggling, hindering or obstructing immigration investigations, illegal entry and re-entry.
- **Detention Reform:** Increases oversight of detention facilities, expands discretion of immigration judges to conduct bond hearings, and requires establishment of alternative to detention programs in consultation with community groups.

Title IV Reforms to Non Immigrant Visa Programs

This Title reforms current non-immigrant visa programs and creates a new W worker visa that melds greater employer flexibility with more worker protections and ability to self-petition for permanent residence.

- **H-1B:** Reforms to the H-1B high skilled visa program include expanding current cap from 65,000 to 110,000 with an option to ultimately increase the cap to 180,000 visas annually based on a High Skilled jobs Demand Index. Increases requirements for web-site advertising for U.S. workers prior to hiring foreign workers. Increases fines on companies that are heavy-users of H-1B visas. After 3 years, companies whose workforce is more than fifty per cent H-1Bs are barred. Allows for work authorization for spouses and children.
- **Deterring Abuse:** Establishes significant new authorities and penalties to prevent, detect, and deter fraud and abuse of the H-1B and L-1 visa systems by fraudulent employers. Increases wages for foreign workers to help protect Americans.
- **H-2B:** Makes permanent the H-2B returning worker provision.
- **New Worker Program (W Visa):** Establishes a new nonimmigrant W classification for lesser-skilled foreign workers performing services or labor for a registered employer in a registered position. Spouses and minor children are included and will receive work authorization. Three year visa with three year renewal periods. Initially, 20,000 W visas will be made available, rising to 75,000 visas in year four. The visa program cap can rise to 200,000 depending on a formula based on economic conditions, demand for the program and the recommendations of a newly established Bureau of Immigration and Labor Market Research. Shortage occupation employers can hire workers outside the cap. W visa holders may switch from one registered employer or position to another without penalty and apply for the merits-based lawful permanent residence program or the Employment-Based system.
- **Agriculture:** A new agricultural guest worker visa program would be established to ensure an adequate agricultural workforce. A portable, at-will employment based visa (W-3 visa) and a contract-based visa (W-2 visa) would replace the current H-2A program. The H-2A program would sunset after the new guest worker visa program is operational.