

September 30, 2010

The Comprehensive Immigration Reform Act of 2010 Introduced by Senators Menendez (D-NJ) and Leahy (D-VT)

This following summary highlights key provisions of the Comprehensive Immigration Reform Act of 2010:

Title I. Border Enforcement

Effective Date Triggers - The full legalization provisions may not take place until the DHS Secretary certifies the following:

- U.S. Immigration and Customs Enforcement (ICE) has **6,410 agents investigating criminal law, 185 worksite enforcement auditors**, and a fraud task force.
- U.S. Customs and Border Protection (CBP) has 21,000 border patrol agents hired and trained, and 7 unmanned aircraft systems deployed.
- ICE has a nationwide [community-based alternatives to detention program](#) in place.
- [E-verify](#) is fully operational and mandatory for all employers
- The Department of Justice (DOJ) has 300 **Assistant U.S. Attorneys who prosecute criminal violations** at the border and 275 **Immigration Judges** in place with staff.

Border Security - This section provides for:

- **250 CBP officers at new ports of entry** along the Southwest border, 2,500 CBP officers to serve at ports along the Northern border, 2,500 CBP officers to serve at points of entry along the Southern border, and \$55 million to help retain experienced CBP officers.
- \$300 million towards **infrastructure improvements** along the ports of entry on the Northern and Southern borders, along with construction of additional ports of entry.
- The hiring of 1,000 **new ICE immigration law violation investigators** each fiscal year.
- 50 **new immigration litigation attorneys** and 20 **new immigration judges** each year.
- Improved training for DHS officers including identifying fraudulent documents, prevention of engaging in racial profiling or violating civil rights, and addressing the needs of vulnerable populations.
- **Increased cooperation with Mexico** regarding border security and reduction in violence and criminal activity, as well as informing Mexican citizens and nationals of U.S. immigration laws.

- Increased resources to the Bureau of Alcohol, Tobacco, Firearms, and Explosives to **fight the smuggling and trafficking of firearms**, and appropriates \$15 million to expand the Project Gunrunner initiative in each state.
- Reimbursement of state and county prosecutors along the borders for federally initiated and referred drug cases.
- A **border relief grant program** to fund law enforcement agencies within 100 miles of the border to combat drug-related criminal activity.
- A new **U.S.-Mexico Border Enforcement Commission** to study enforcement strategies along the Southern Border and strengthen relations between communities and the government, and make recommendations to the President and Congress. The commission is authorized to hold hearings, subpoena testimony, and make recommendations to DHS.
- Clarification that **federal laws preempt any state or local law that discriminates on the basis of immigration status**, and clarifies that [287\(g\)](#) does not authorize states to engage in any immigration enforcement activities.
- **Border Community Liaison Offices** at every border patrol sector, which will consult with border communities on strategies and policies, as well as agent conduct and performance.

Title II: Interior Enforcement

Prevention of Unauthorized Entries and Removal

- Strengthens the security of the Visa Waiver Program and Entry and Exit Requirements (includes the “Strengthening the Visa Waiver Program to Secure America Act.”).
- Within 18 months, requires the DHS Secretary to use **U.S. Visit** technology to deploy a system capable of recording the departure of nonimmigrants.
- Increases the civil penalties for illegal entry.
- Increases the **finest and criminal penalties** for reentry of previously removed aliens.
- Modifies conditions of **voluntary departure**, as well as increases fines and penalties for non-compliance.
- Authorizes the Attorney general to reimburse states for costs incurred for the imprisonment of any illegal aliens convicted of felonies in that state (**State Criminal Alien Assistance Program**).
- Increases penalties for producing, using, or trafficking in **fake or stolen passports**, and producing, using, or trafficking in fake or stolen immigration documents.
- Prohibits non-citizens from buying firearms and engaging in interstate commerce related to firearms.
- Clarifies the definition of **“aggravated felony”** in immigration law, requiring it to be a felony described in the definition for which the individual served one year of imprisonment or more.

Detention Reform

- Provides **protections for children** involved in immigration enforcement actions, including requiring DHS to contact the local child welfare agency, and requiring DHS to provide social

workers to screen apprehended individuals to determine if they are parents, legal guardians, or primary caregivers, and provide phone calls within 8 hours to arrange for child care.

- *Families with children will not be separated* or taken into custody except when required by law or in exceptional circumstances. In these circumstances, they will live in family units in a non-penal facility, and their custody status will be reviewed every 30 days.
- Individuals who are *parents or legal guardians of children* have the right to daily phone calls and regular visits to their children, to participate in family court proceedings affecting custody of their children, and to have their children join them in country of origin if they are being removed.
- Establishes a program for *secure alternatives to detention*.
- Ensures that all detained individuals are treated humanely: Requires that each detainee receive prompt and adequate *medical care*, a comprehensive intake screening, and any necessary medications. Heightens requirements for administering psychotropic medication, transfer of detainees, and solitary confinement.
- Requires that by 2012 all detention facilities be located within 50 miles of a city where *free or low costs legal services* are available.
- Permits the Attorney General to appoint counsel to represent aliens in removal proceedings.
- Establishes the position of *ICE Ombudsman*, who will inspect detention facilities to determine compliance with relevant policies, procedures, and laws, and report these findings to the DHS Secretary and ICE Assistant Secretary.
- Provides that refugees, their spouse, and their children who are admitted under INA 207(c) will be lawful permanent residents as of the date of their admittance.
- Eliminates the *one-year time limit for filing an asylum claim*.

Title III: Worksite Enforcement

Mandatory National Employment Verification System

- Creates a *mandatory employment verification system* to be administered by DHS and to be mandatory for all employers within 5 years.
 - All federal government employers must register within 60 days after the date of enactment;
 - any employer or industry designated to be “critical infrastructure” must participate in the system within 1 year;
 - employers with more than 1000 employees shall participate within 2 years;
 - employers with more than 500 employees within 3 years, and employers with more than 100 employees, within 4 years.
 - Additionally, if an employer is found to have violated immigration law, it shall be required to register for the system. Employers may also register on a voluntary basis.
- Outlines the *requirements for employers* participating in the system, including required training to ensure proper use and the protection of civil rights, civil liberties, and privacy and required

notification to employees stating that the system cannot be used for discriminatory or immigration enforcement purposes.

- Outlines the process for confirmation or nonconfirmation of employment authorization. A confirmation or nonconfirmation must be issued within 15 days. Employees must receive notice of the nonconfirmation within 3 business days. Employees are prohibited from employing an individual who received a nonconfirmation following the expiration of the administrative appeal or if a further action notice was not contested.
- Creates an ***administrative and judicial review process***. If the nonconfirmation was caused by the employer's negligence or misconduct, the employee can seek damages, back pay, reinstatement, and other remedies in a civil action against the employer.
- Provides for ***annual studies, audits, and reports*** by the U.S. Comptroller General and the DHS Office for Civil Rights and Civil Liberties.
- Provides that DHS must establish procedures for compliance with system rules by employers and establishes penalties for employers who do not comply with the rules.
- ***Preemption***: Clarifies existing law that the employment of unauthorized workers is the responsibility of the federal government and leaves no room for additional state or local legislation.
- Provides that workers cannot be denied backpay or any other monetary remedy for unlawful employment practices by an employer or for workplace injuries because they are unauthorized or because the employer failed to comply with employment verification procedures.
- Requires that within 2 years, only ***fraud-resistant, tamper-resistant, and wear-resistant Social Security cards*** will be issued. Within one year, the DHS must issue only machine readable, tamper-resistant employment authorization documents that use biometric identifiers.
- Amends INA Section 274B, which ***prohibits employment discrimination based citizenship status or national origin***. The misuse of the employment verification system (such as terminating an employee while confirmation is pending or failing to provide timely required notice to employees) is added to the list of unfair immigration-related employment practices. Violations are to be litigated by Office of Special Counsel in the DOJ Civil Rights Division.
- Authorizes the creation of a ***voluntary Enhanced Verification System*** which would allow individuals to self-verify their work eligibility, to review their records in the employment verification system, to update information in the system, to submit biometric information, and to block the use of their Social Security numbers in the system.

Title IV: Reforming America's Legal Immigration System

New Worker Program and the Creation of a Standing Commission

- Establishes a ***Standing Commission on Immigration, Labor Markets, and the National Interest***.
 - The commission is charged with establishing employment-based immigration policies, [recommending appropriate levels](#) of new employment based visas, setting initial level of visas for the newly created temporary worker program, and facilitating research and analysis on the broader impact of immigration on the economy, labor, security, and foreign policy

- The Commission will be an independent, bipartisan agency which is required to make annual recommendations to Congress on employment based visa matters, but Congress must act for any new levels to take effect.
- Creates the new ***H-2C nonimmigrant worker program*** to provide additional workforce capacity in employment sectors for which there is a shortage of available American labor.
 - The program permits employers to petition for workers only after meeting strict criteria for ensuring that American labor is unavailable and paying additional fees (up to \$1,500 per application) based on company size.
 - Visa holders must meet criminal and other background checks, have an offer of employment, and otherwise be admissible to the U.S. Dependents will be permitted to enter the U.S.
 - The initial H-2C visa is valid for three years and may be renewed for three more years.
 - With some exceptions, an H-2C visa will be revoked if the visa holder has been unemployed for more than 60 days. After 4 years, an H-2C non-immigrant may file an application for adjustment of status, provided that he has been continuously employed, establishes progress toward civics and English proficiency, meets all criminal and other background checks and pays additional fines and fees.
- Substantially ***expands labor protections for temporary workers***, increases labor enforcement authority of federal government, requires employers to provide personal safety equipment at no cost to workers, and requires Immigration and Customs Enforcement officers to cooperate with ongoing labor violation investigations.

Family and Employment Visa Reforms

- This section ***reduces existing backlogs*** by recapturing unused family and employment based visas and permitting roll-over of unused visas in the future, exempts certain categories of applicants from visa caps, including persons who have earned an advanced degree in the sciences from a U.S. university, physicians working in shortage areas, and persons admitted under extraordinary ability visas.
- ***Promotes family unity*** by revising current unlawful presence bars and providing broader discretion to government to waive bar in cases of hardship. Reduces backlog waiting time by reclassifying spouses and children of lawful permanent residents as immediate relatives and eliminates the employment-based caps. Provides for work authorization during gaps caused by transition from nonimmigrant to immigrant status based on backlogs. Reduces percentage of income necessary to sponsor an applicant.
- Addresses long-standing technical barriers to family reunification for the ***children of Filipino World War II veterans***, provides clarifications to ***widow and orphan protections*** and provisions allowing for adjustment of status for the ***children of persons admitted as fiancés***, and revises immigration rules to treat ***step children*** equally for purposes of immigration.
- Provides an additional 1,000 visas for humanitarian relief at the discretion of the Secretary of DHS.
- Fully incorporates the ***Uniting American Families Act*** relating to equal treatment for permanent partners seeking to immigrate to U.S. on the basis of relationship to U.S. citizen.
- Expands opportunities for ***investor visas*** by permanently reauthorizing regional center (pooled investment) programs, expanding premium processing, providing incentives to invest in targeted employment areas.

Reforms to Current Temporary Worker Programs and Expansion of Worker Protections

- Expands *protections for H-2B (temporary seasonal) workers* relating to foreign recruitment, costs of travel and other job related expenses, wage and hour violations, wage parity, and portability of visa, and rights to sue employers. Requires H-2B employers to make every effort to first hire American workers, similar to those under the H-2C program, except in limited circumstances where failure to hire temporary workers could result in loss of American jobs.
- Revises the current *H-1B and L-1 Visa programs*, relating to high-skilled workers and management positions to provide greater assurances that an employer has first attempted to fill the job with an American applicant, increases oversight to prevent fraud and employment violations, provides for notice of rights to workers, increases requirements for an L-1 employee who will open a new office for a company in the U.S., increases tax filing obligations on employers and increases government authority to investigate complaints against employer.
- Fully incorporates “*AgJOBS*,” legalizing certain farmworkers and reforming the H-2A visa program.
- Includes the “*POWER Act*” which expands U-visas to include victims of certain workplace and labor violations and provides for protections against removal for foreign workers who are assisting labor or other officials in their investigation.

Title V: Legalization of Undocumented Individuals

Lawful Prospective Immigrants

- *Creates a provisional legal status, Lawful Prospective Immigrant (LPI)*, for undocumented immigrants who are present in the U.S. as of September 30, 2010, register with the government, have never committed a serious crime, and are otherwise admissible to the United States.
 - Applicants must submit biometric data and undergo background and security checks and pay appropriate fees.
 - Applications for LPI status will be accepted for one year; persons facing removal proceedings or with final removal orders will be permitted to apply if they are otherwise eligible.
 - LPI status will be initially valid for four years, with the possibility of extensions.
 - LPI status confers work and travel authorization.
 - Spouses and children residing in the U.S. or abroad will be eligible for LPI Dependent (LPID) status.
 - LPI and LPID status may be revoked at any time if the LPI/LPID ceases to be eligible for the program or is absent from the U.S. for more than six months without permission.
- After six years in LPI/LPID status, an applicant may apply to become a *lawful permanent resident*, provided he or she continues to meet all eligibility requirements, including renewed biometrics and background and security checks, and also establishes basic citizenship and English skills, payment of all taxes, and compliance with Selective Service registration.
 - Applicants over the age of 21 will pay a \$1,000 penalty in addition to processing fees.
 - Persons granted LPR status under this Act will be ineligible for means tested benefits in accordance with existing law.

- Regardless of date of application, no one may receive LPR status for at least 8 years from the date of enactment or 30 days from the date that visas are made available to reduce all backlogs covered by this Act.
- Creates ***administrative review, removal proceedings, and judicial review*** for aliens who have applied for lawful prospective immigrant status. Denials of applications may be appealed to a special administrative review panel. A denial from the administrative appeal is final and may not be renewed in immigration court, but an applicant may preserve federal judicial review, which may only be considered after the completion of removal proceedings. If an applicant is not already in removal proceedings and wishes to pursue further review, he or she must ask to be placed in removal proceedings. There is no judicial review available for late filing denials. Broader challenges to the implementation of the law may be brought in federal court. However, there are limits on the nature, jurisdiction and timing of certain claims.
- Includes provisions to ensure ***confidentiality of information***. Release of material about an individual application is strictly prohibited, and subject to disciplinary action and civil penalties, except in circumstances relating to legitimate law enforcement or national security inquiry or a coroner's request and only when that inquiry is specific or governed by existing information sharing agreements. Confidentiality protections do not apply where fraud is established or all proceedings related to the application have been completed.
- The ***number of persons granted LPR status*** under this Title will not be included in calculating annual visa limitations. Information submitted regarding past employment can not be used against an employer for purposes of prosecuting immigration or tax laws. Requires Social Security Administration to assign SS numbers to LPI/LPIDs.
- Regulations must be issued within nine months of enactment. The government is authorized to engage in contracting and hiring (in order to quickly build the program) without following certain requirements and may lease properties and modify facilities directly.
- Permits LPIs to ***correct their social security records without penalty*** and requires the creation of fraud prevention programs within the departments charged with administering the legalization provisions.
- Incorporates the entirety of the "***DREAM Act***."
- Establishes two new ***fee accounts***. The first will use application fees and appropriated funds to operate the LPI program, including the costs of outreach, grants to service providers, and anti-fraud programs. The second account will distribute penalty fees collected into the program, to repay initial start up funds, and to further benefit immigration benefit, enforcement, investigation, fraud prevention and integration programs.

Title VI: Immigrant Integration and Other Reforms

- Includes provisions to ***expand investment in English literacy and U.S. history and civics education***. Contains provisions supporting English language acquisition and adult education in the workforce.
- Renames the Office of Citizenship the "***Office of Citizenship and New Americans***," and enhances the Office's efforts to integrate immigrants into U.S. communities, promote instruction and training on citizenship responsibilities, and develop better educational materials for immigrants pursuing citizenship.
- Provides competitive grants to states to form ***state-based New American Councils***. Such councils will be comprised of local business leaders, faith-based and community organization

leaders, local elected officials, philanthropists, and educators dedicated to providing better opportunities for immigrant communities.

- This section establishes a ***new citizens' award program*** to recognize naturalized citizens who have made an outstanding contribution to the United States.
- Provides for the adjustment of status for certain ***Haitian orphans and Liberian nationals***.
- Establishes a commission to study the treatment of European Americans, including German Americans, Italian Americans, and Jewish refugees, by the United States during World War II and a Commission on Wartime Treatment of Jewish Refugees. Creates a State Court Interpreter Grant Program.
- Provides lawful permanent resident status to certain ***family members of immigrants who died as a direct result of terrorist activity conducted against the U.S. on September 11***.