

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

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

Short Summary

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. The bill appropriates \$3 billion for this plan which will include technology, personnel and other resources.
- **Triggers:** The Secretary's border plan must be operational before any RPIs may apply for adjustment of status. The Secretary must develop and implement a fencing plan (\$1.5 billion); E-Verify must be mandatory and operational; and a biographic entry-exit system 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 goals. The Commission would 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.
- **DHS Oversight:** 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 and the 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. DHS will be required to issue regulations on racial profiling that are based on a study analyzing individualized data on DHS officers enforcement activity.

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

This title provides a path to citizenship for the 11.5 undocumented immigrants 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 immigration 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 a serious crime, pay any assessed tax liability, and 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 on the same application.
- **Renewal:** RPIs applying for renewal will be subject to a new background check, payment of processing fees, payment of taxes, and a \$500 fine. RPIs must provide evidence of having been 1) regularly employed while meeting a requirement that he/she is not likely to become a public charge or 2) having resources to demonstrate 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 demonstrate: 1) they are admissible, 2) pay an additional \$1000 fine per adult plus application fees; 3) prove they are learning English; 4) pay their taxes; 5) pass a background check and 6) demonstrate compliance with the employment requirement. Specifically, they must show: 1) they have regularly worked in the U.S. such that they are not likely to become a public charge or 2) they have resources to meet 125% of the Federal Poverty Level. Under the revamped legal immigration system, individuals present in the U.S. for 10 years in lawful status can adjust status to lawful permanent residence including RPIs and other legal immigrants. RPIs may apply for naturalization after an additional three year wait, making the total path to citizenship about 13 years. The bill includes a “back of the line” requirement: RPIs may not adjust status until the family and employment backlogs are cleared.
- **Timeline:** DHS has 12 months to issue regulations. Then there is a one year initial application period which can be extended by the Secretary for up to 18 months.
- **DREAM Act:** Individuals who entered the U.S. before the age of 16 and who have completed high school or obtained a GED in the U.S. may register for RPI status through the DREAM Act. There is no age cap for the program. Individuals who received Deferred Action for Childhood Arrivals are grandfathered into RPI status. DREAM RPIs are exempted from penalties and the triggers. 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. The bill 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 575 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. To be eligible for permanent residence, agricultural workers

must show that they have paid all taxes, have not been convicted of any serious crime, and pay a \$400 fine.

- **Integration:** Creates an Office of New Americans, a New Americans taskforce and additional initiatives to help immigrants learn English, American civics and integrate into local communities. Provides funding for programs to help non-profits and local government with these initiatives.

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, with the possibility of increasing the allotment by 5% (up to 250,000) in any year when unemployment is under 8.5%. Points will be awarded for factors such as education, employment, family in the U.S. and length of residence in the U.S. Half of the merit visas will be set aside for high skilled individuals and half of the cap will be for lower skilled workers.
- **A new “Track Two” merit-based system** is created to clear the employment and family backlogs. In addition, this system allows individuals who are lawfully present in the U.S. for over ten years with work authorization to adjust status to permanent residence.
- **Lawful Permanent Residents’ spouses and children:** The 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. The 3rd preference family category (adult married children of U.S. citizens) will have an age cap of 31 beginning 18 months after enactment. The backlog reduction program will include processing of petitions in phased-out family categories. U.S. citizens can petition for a sibling for up to 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 include elimination of employment based country caps, an increase in family based country limits, and recapture of unused visa numbers. Popular programs for foreign doctors (Conrad-30), religious worker recruitment, and EB-5 investors are permanently reauthorized. Numerous other technical fixes to improve and streamline current visa programs are included (additional protections for stepchildren, widows, and other family members.)

- **Judicial Discretion:** Expands the 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:** An electronic employment verification system (E-verify) will cover all employers within a five year period, beginning with federal contractors and critical infrastructure employers. It requires identity verification through use of enhanced fraud-proof documents. 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 a 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 verification laws, expansion of U visas in employer abuse situations, 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, and permanently 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, illegal entry, and re-entry. Creates a mandatory exit verification system,
- **Detention Reform:** Increases oversight of detention facilities, expands the ability of immigration judges to conduct bond hearings, and expands alternatives to detention.

Title IV. Reforms to Non Immigrant Visa Programs.

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

- **H-1B:** Changes to the H-1B high skilled visa program include expanding the 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. Allows for work authorization for spouses and children. Increases requirements for recruiting and offering jobs to U.S. workers at higher wages prior to hiring foreign workers. Increases fines and wage requirements for companies that are heavy-users of H-1B visas. After 3 years, companies whose workforce is more than fifty percent H-1Bs are barred.
- **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 are work-authorized. It is a three year visa with three year renewal periods. Initially, 20,000 W visas will be made available, rising to 75,000 visas in four years. The visa program cap can rise to 200,000 depending on a formula based on unemployment, job openings, number of applications 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 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 provide a more stable agricultural workforce. A portable, at-will employment based visa (W-3 visa) and a contract-based visa (W-2 visa) administered by the Department of Agriculture would replace the current H-2A program. It will provide growers with a streamlined process to petition for worker while ensuring critical worker protections. The H-2A program would sunset after the new guest worker visa program is operational.
- **INVEST Visa:** This bill creates a new INVEST visa for foreign entrepreneurs who seek to come to the U.S. to start their own companies. This 3-year visa would be available to immigrant entrepreneurs who have a qualifying investor in the US and can be renewed if it can demonstrate certain benchmarks related to the number of jobs it creates and revenue it produces.