

H.R. 3938

Enforcement First Immigration Reform Act of 2005

Introduced by Rep. J.D. Hayworth (R-AZ)

23 Original Cosponsors

TITLE I: CLEAR AUTHORITY FOR INTERIOR ENFORCEMENT

Sec. 101 State defined.

A "State" is defined the same as in the Immigration Nationality Act of 1996.

Sec. 102 Federal affirmation of assistance in immigration law enforcement by states and political subdivisions of States.

Clarifies that state and local law enforcement already have existing, inherent authority to assist in enforcing immigration law during the course of routine duty.

Sec. 103 State authorization for assistance in the enforcement of immigration laws encouraged.

- Within 2 years of enactment, a state or locality with a practice, policy or statute prohibiting law enforcement from assisting with immigration enforcement will be ineligible for State Criminal Alien Assistance Program (SCAAP) funding.
- Does not require victims of crime and witnesses to crimes be reported or arrested.

Sec. 104 Civil and criminal penalties for aliens unlawfully present in the United States.

- Makes being in the U.S. in violation of current immigration law a felony.
- Allows a defense for aliens with an "exceptional or extremely unusual hardship". Increases criminal penalties from 6 months to 1 year.
- Gives aliens 30 days to depart voluntarily (down from 120 days in current law).

Sec. 105 Listing of immigration violators in the national crime information center database.

Requires Department of Homeland Security (DHS), within 6 months of enactment, to provide the National Crime Information Center with information on all aliens:

- with a final order of removal;
- who have signed a voluntary departure agreement;
- who have overstayed their authorized period of stay (visa overstay); and
- who have had their visa revoked.

Sec. 106 State and local enforcement provision of information about apprehended illegal aliens.

States and localities are requested to provide information on aliens apprehended. Requires DHS to report to Congress annually about the degree to which states and localities share information. Requires DHS to reimburse states and localities for the cost of this reporting.

Sec. 107 Financial assistance to state and local police agencies that assist in the enforcement of immigration laws.

Authorizes \$1 billion in grants for the procurement of equipment, technology, facilities, and other products directly related to assisting the enforcement of immigration law. In order to be eligible, a state or locality must have in effect the policy and practice to assist in the enforcement of immigration law. Authorizes a GAO audit on this fund within 3 years to determine expenditures.

Sec. 108 Increased federal detention space.

Authorizes the construction of 20 new federal detention facilities with at least 500 beds each. Directs the DHS to examine the potential use of facilities being closed by the Base Realignment and Closure process.

Sec. 109 Federal custody of illegal aliens apprehended by state or local law enforcement.

- Upon request from a state or locality to pick up an illegal alien, DHS has 48 hours after the conclusion of charging or dismissal process to either a) take the alien into custody; or b) ask the state or locality to temporarily incarcerate or transport the alien to federal custody.
- DHS will designate at least one facility per state as the central point for transferring custody. Any facility adequate for use by U.S. Marshals is also adequate for aliens. Provides reimbursement to states and localities for the cost of transporting aliens to federal custody, based on average costs. Authorizes a GAO audit over this funding.

Sec. 110 Training of state and local law enforcement personnel relating to the enforcement of immigration laws.

- DHS will establish a training manual and pocket guide for law enforcement on how to assist in the enforcement of immigration law. Authorizes voluntary, not mandatory, training for state and local officers at no cost to them for training and materials.
- Training under the existing 287(g) program will be limited to 2 weeks.

Sec. 111 Immunity.

Personal liability immunity identical to federal law enforcement is extended to state and local law enforcement if those officers are acting within the scope of their official duties. Agency immunity for civil rights monetary damages (but not criminal laws).

Sec. 112 Institutional removal program (IRP).

- Expands the current IRP to all States. Authorizes detention after the completion of a sentence for up to 14 days until the federal government can take custody.

- Allows for technology usage to assist in the goals of the IRP.
- Authorizes increased appropriations for the IRP.

Sec. 113 State criminal alien assistance program (SCAAP).

Increases SCAAP funding to \$1 billion per year.

Sec. 114 Detention of dangerous aliens.

- Authorizes DHS to detain aliens who are subject to a final order of removal but who have obtained a stay of removal pending judicial review.
- Clarifies that DHS has authority to detain aliens beyond the expiration of the removal period, even if their removal is not expected in the foreseeable future, pursuant to the regulations issued by DHS.

Sec. 115 Increased criminal penalties for alien smuggling, document fraud, gang violence, and drug trafficking.

- Enhances criminal penalties for offenses related to smuggling, transporting, or harboring unlawful aliens, and enhances penalties for offenses related to document fraud.
- Increases criminal penalties for crimes of violence or drug-trafficking offenses committed by aliens who are unlawfully present in the U.S.

Sec. 116 Penalty for countries that do not accept return of nationals.

Authorizes DHS, after consulting with the Department of State, to deny admission to nationals of a country that declines to accept the prompt repatriation of its nationals.

Sec. 117 No judicial review of visa revocation.

Restricts judicial review of visa revocations, irrespective of whether the revocation forms the sole basis for removal.

Sec. 118 Alternatives to detention.

Directs DHS to expand to all fifty states pilot programs to explore methods of supervising aliens pending administrative review of their immigration cases or deportation.

Sec. 119 Additional immigration personnel.

- Authorizes appropriations for an additional 1,000 DHS investigators over five years (200 more than were authorized in the Intelligence Reform and Terrorism Prevention Act of 2004).
- Establishes a new Assistant Attorney General for Immigration Enforcement in the Department of Justice (DOJ) to coordinate and prioritize immigration litigation and enforcement in the federal courts, including removal/deportation, employer sanctions and alien smuggling/human trafficking.
- Authorizes an additional 500 DHS attorneys and 250 DOJ immigration judges over five years.

- Authorizes 250 additional attorneys for the DOJ's Office of Immigration and Litigation (OIL), and 250 Assistant U.S. Attorneys over five years to litigate immigration cases.

Sec. 120 Completion of background and security checks.

Clarifies that DHS has legal authority to withhold the adjudication of any immigration application or request for a benefit, or to withhold evidence of status or employment and travel authorization, until DHS has determined that all appropriate background checks have been completed.

Sec. 121 Denial of benefits to terrorists and criminals.

Authorizes DHS to deny any federal benefit related to immigration policy to aliens who may pose a threat to national security.

Sec. 122 Reinstatement of previous removal orders.

Clarifies that immigration officers may reinstate prior orders of removal against aliens who have been deported and illegally reentered the U.S.

Sec. 123 Automated alien records.

Authorizes \$25 million over five years for DHS to automate the storage of alien records in an electronic format that is interoperable with DOJ alien record-keepings systems and accessible by other appropriate federal agencies for the purposes of administering U.S. immigration laws.

Sec. 124 Annual report on interior enforcement.

Requires DHS to report to Congress by January 15th of each year after enactment on the progress of interior enforcement of immigration law.

TITLE II: IMPROVED BORDER SECURITY

Sec. 201 Assignment of members of the Armed Forces to assist Bureau of Border Security and Bureau of Citizenship and Immigration Services of DHS.

Authorizes the Secretary of Homeland Security to request the Secretary of Defense to assign members of the Armed Forces to defend the border against a national security threat.

Sec. 202 Necessary assets for controlling United States borders.

- Authorizes a five-year plan of recruiting and training 1,250 new Customs and Border Protection officers and 10,000 Border Patrol agents. This is the same number of Border Patrol agents authorized in the Intelligence Reform and Terrorism Prevention Act of 2004.
- Authorizes \$2.5 billion over 5 years to acquire and deploy unmanned aerial vehicles, cameras, poles, vehicle barriers, sensors, radar, and other technologies.
- Authorizes \$2.5 billion over 5 years for DHS to acquire or improve the facilities necessary to support its mission of controlling the borders, including ports of entry, checkpoints, Border Patrol stations and the construction of all-weather roads.
- Authorizes Border Patrol to maintain temporary or permanent checkpoints on roadways close to the borders.

Sec. 203 Expedited removal between ports of entry.

- Directs DHS to employ the expedited removal process along the entirety of U.S. land borders as soon as possible.
- Requires supervisory review of decisions to remove inadmissible aliens.
- Authorizes \$50 million over five years to achieve this objective.

Sec. 204 Document fraud detection.

Requires that all immigration inspectors receive training in identifying and detecting fraudulent travel documents, and that they have access to the Forensic Document Laboratory.

Sec. 205 Release of aliens from noncontiguous countries.

- Increases the minimum bond for any alien from an on-contiguous country who is apprehended at or between the ports of entry on the land borders.
- Requires DHS to report to Congress on the number of aliens from non-contiguous countries who are apprehended in between land border ports of entry.

Sec. 206 Reducing illegal immigration and alien smuggling on tribal lands.

- Authorizes DHS to distribute such sums as necessary to assist American Indian tribes whose land is contiguous to the border.
- Provides incentives to American Indian Tribes to work with DHS to ensure that necessary access to tribal lands is available to enhance the enforcement of immigration laws.

TITLE III: SOCIAL SECURITY FOR WORKING AMERICANS

Sec. 301 DHS notification of SSA letters to resolve discrepancies in wage records.

Directs SSA to notify DHS when SSA sends non-match letters to employers. Non-match letters are sent to employers with 10 or more employees with Social Security numbers (SSNs) that do not match with names of people eligible to work. Non-match letters to employees and employers will include language informing them that DHS is receiving the same letter, and that DHS may then enforce applicable law (against employing unauthorized workers, deportation proceedings for unauthorized residents, etc).

Sec. 302 Increases fines for employers submitting non-matching SSNs on employee W2s.

- Significantly closes the “reasonable cause” loophole, making the IRS fine automatic, unless: the employer has documentation that he or she verified the employee’s status with the Social Security Administration (IRS and SSA will cross-check prior to levying a fine), or if the incorrect SSN was a simple clerical error. In those two cases, the employer has 60 days to amend the false W-2 with correct data.
- The fine increases from \$50 per employee to \$500, and increased cap of total fine per employer from \$100,000 up to \$500,000 for small business, and from \$100,000 to \$2.5 million for all other businesses.

Sec. 303 Report to Congress of employers with high numbers of unauthorized workers.

IRS and SSA will submit an annual report to the Ways and Means Committee of the five-hundred employers with the highest number of non-matching employees, and of the two-hundred-fifty employers with the highest percentage of non-matching employees (only businesses employing over 100 people).

Sec. 304 No credit toward Social Security benefits will be given to workers based on illegal work.

Periods of work by unauthorized workers will not be creditable toward Social Security benefits.

TITLE IV: WORK AUTHORIZATION & ENFORCEMENT

Sec. 401 Requirement for employers to conduct employment eligibility verification.

Requires all employers, including the federal government and subcontractors thereof, to use the Employment Eligibility Verification System, formerly the Basic Pilot program, to verify the work authorization of all employees before they begin work.

Sec. 402 Amendments to the Social Security Act relating to identification of individuals.

Requires SSA to issue machine-readable, tamper resistant Social Security cards within two years of enactment. The card shall not be used for purposes other than work verification.

Sec. 403 Employment Eligibility Database.

Requires the Secretary of Homeland Security to keep and maintain the Employment Eligibility Database, including citizenship status, work and residency eligibility, and proper safeguards to ensure confidentiality of the information contained in the database.

Sec. 404 Requirements relating to individuals commencing work in the United States.

Requires potential employees, two years after enactment, to obtain a new tamper resistant social security card before beginning new employment and presenting it to the employer for verification.

Sec. 405 Compliance.

- Increases the fine for employing illegal immigrants from \$10,000 to \$50,000 per illegal immigrant hired.
- Increases the jail term for hiring illegal immigrants to 1 year per illegal immigrant hired with a 5-year maximum sentence for these violations.

Sec. 406 Increase in personnel ensuring compliance with prohibitions on unlawful employment of aliens.

Authorizes the hiring of 10,000 new DHS personnel whose sole responsibility will be to enforce employer compliance and authorizes a minimum of \$100 million per year to prosecute those who employ illegal immigrants.

Sec. 407 Integration of fingerprinting databases.

Requires the Secretary of Homeland Security and the Attorney General to integrate the fingerprint databases of the two agencies.

Sec. 408 Authorizations of appropriations.

Authorizes the Department of Homeland Security to spend \$100 million to enact this title.

Sec. 409 Rules of construction.

The new tamper resist Social Security card created under this title shall not become a national identification card, and shall be used only for the employment authorization system developed herein.

TITLE V: SECURE FOREIGN IDENTIFICATION

Sec. 501 Prohibition on acceptance of identification issued by foreign governments.

Prohibits federal agencies of the executive, legislative, or judicial branches from accepting foreign identification documents issued by foreign governments except passports.

Sec. 502 Foreign-issued forms of identification prohibited as proof of identity to open accounts at financial institutions.

Prohibits financial institutions from accepting foreign identification documents other than a passport for the purposes of opening an account.

Sec. 503 Identification standard for federal benefits.

Prohibits all federal, state, and local agencies and employees thereof that are charged with providing or approving federally funded benefits or services from accepting identity documents except valid, unexpired U.S. passports, federal identity documents, federal immigration documents, state and local identity documents, and foreign passports.

Sec. 504 Change in format of Individual Taxpayer Identification Numbers (ITINs).

Requires the Internal Revenue Service (IRS) to change the format of Individual Taxpayer Identification Numbers to distinguish them from social security numbers.

Sec. 505 Sharing ITIN-related information.

Requires IRS to share ITIN information with DHS for the purposes of enforcing immigration laws.

Sec. 506 Birth Certificates.

- Establishes minimum security standards for the federal recognition of state-issued birth certificates.
- Requires SSA to independently verify birth records submitted in support of applications for Social Security cards.

TITLE VI: LEGAL IMMIGRATION REFORM

Sec. 601 Increase in employment-based visas.

Increases the number of employment-based immigrant visas to 260,000 per year (from 140,000 in current law).

Sec. 602 Increase in cap on unskilled workers.

Increases the number of unskilled shortage workers admitted under the 3rd preference visa category to 20,000 (from 10,000 in current law).

Sec. 603 Elimination of the family 4th preference visa category for siblings of adult U.S. citizens.

Terminates the family-sponsored immigration category for siblings of adult U.S. citizens. The category is limited to 65,000 visas per year.

Sec. 604 Three-year moratorium on immigrant visas for Mexican nationals.

Prohibits the federal government from approving any legal permanent resident applications for citizens of Mexico until 3 years after the date of enactment.

Sec. 605 Limitation on number of family-sponsored immigrant visas from Mexico.

Requires that family-sponsored immigrant applications for citizens of Mexico not exceed 50,000 per year.

Sec. 606 Elimination of diversity lottery visa category.

Terminates the diversity lottery visa category for aliens from foreign nations with low admission levels. Applicants are currently selected at random without regard for skills or family connections to the U.S. The category is capped at 55,000 visas per year.

Sec. 607 Annual report on projected job creation and foreign labor demand.

Requires the Department of Labor to submit an annual report to Congress on the projected job creation and demand for foreign laborers (both temporary and permanent workers) by April 1st for a period of 5 years.

Sec. 608 Visa term compliance bonds.

Affirms the authority of consular officers to require an applicant for a non-immigrant visa to obtain a visa terms compliance bond as a condition for approving such a visa.

Sec. 609 Release of aliens in removal proceedings.

Aliens in removal proceedings may be released on a bond of at least \$10,000 or on his/her own recognizance unless an immigration judge determines the alien is not a flight risk or threat to national security.

Sec. 610 Detention of aliens delivered by bondsmen.

Requires the Secretary of Homeland Security to take into custody any alien subject to a final order of removal within the limitations of the bond.

TITLE VII: CITIZENSHIP REFORM

Sec. 701 Citizenship at birth for children of non-citizen, non-permanent resident aliens.

Limits automatic citizenship for children born in the U.S. who:

- 1) was born in wedlock to a parent either of whom is a U.S. citizen or national, or is an alien lawfully admitted for permanent residence who maintains such residence; or
- 2) was born out of wedlock to a mother who is a U.S. citizen or national, or is an alien lawfully admitted for permanent residence who maintains such residence.

Sec. 702 Sanctions for Acts Violating the Oath of Renunciation and Allegiance.

Establishes civil and criminal penalties for citizens who violate the Oath of Renunciation and Allegiance by voting in a foreign election, running for elected office in a foreign country, serving in a foreign government, using a foreign passport, retaking a foreign oath of allegiance, or serving in a foreign military unless a waiver is authorized by the federal government.

Sec. 703 Policy of discouragement of dual/multiple citizenship.

Directs the Secretary of State U.S policy on dual/multiple citizenship to reflect traditional U.S. position discouraging this policy.

Sec. 704 Informing birth nations of their previous citizens' new status as Americans citizens.

Requires the Secretary of State to inform consular officials of foreign states that a naturalized U.S. citizen is no longer under jurisdiction of that foreign state.