

## TWELVE REASONS THE "GANG OF 8" IMMIGRATION BILL SHOULD BE OPPOSED

**#1: Fails to secure the border.** *Serious immigration reform would start with truly securing the nation's borders. Unfortunately, this legislation only gives lip service to the issue, requiring DHS to simply submit a border security plan to trigger the instant legalization of millions of illegal immigrants.*

- Begins legalization 6 months after the law is enacted, when DHS submits a *plan* to Congress on how to achieve and maintain "effective control" (90% success rate) of the nine border sectors, in addition to a "fencing strategy" (no new fencing required). (pg. 854-59).
  - Once plans are submitted, illegal immigrants become eligible for registered provisional immigrant (RN) status, permitting work in the U.S. and travel outside the country. (pg. 856).
- Continues legalization when various "triggers" are met, including certification that the border security plan is "substantially deployed and substantially operational" and the fencing strategy is "substantially completed." (pg. 856) These determinations are at the sole discretion of the Secretary (pg. 856).
  - These are the only border security triggers that must be met before illegal immigrants with RN status are able to apply for an adjustment to legal permanent resident (LPR) status. (pg. 854-59)
- LPR Status after 10 years — regardless of whether any of the border security or enforcement measures have been implemented — if any of the triggers is prevented from being implemented by litigation or an act of God (pg. 857-58).
  - Then, the bill allows the Secretary to grant LPR status to the illegal population. (pg. 857-58)

**#2: Unfairly grants legal status to millions of illegal immigrants ahead of those following our laws.** *Illegal immigrants are granted legal status and special visas allowing them to travel and work in any profession. These privileges are not available to legal immigrants. Illegal immigrants will also obtain green cards faster than legal immigrants in some instances.*

- Grants legal status to the estimated 11 million people who have been living and working in the U.S. illegally, while legal applicants continue to wait outside the U.S. While amnestied immigrants will get green cards immediately when they are eligible, legal applicants who submit petitions for capped visas will have to wait in line for a visa to become available (pp. 1161-66).
- Contains a version of the DREAM Act, granting instant legalization to illegal immigrants who came to the U.S. under the age of 16, and was rejected by the Senate in 2010. This version is worse because it has no maximum age limit, grants both green cards and citizenship within five years of enactment, and encourages states to give in-state tuition to illegal immigrants (pg. 1000-1008). Furthermore, no border security or enforcement measures are required for this particular legalization to occur (pg. 1000-1008).
- Contains a special, accelerated "blue card" process that immediately grants legal status to illegal immigrants who have been working on farms, dairies, or in other agricultural business over the past two years, and provides those same illegal immigrants a full green card in five

years. (pgs. 1043- 1077). Like the DREAM Act, this legalization is not subject to any border security or enforcement triggers. (pgs. 856-57).

- Allows (through DREAM and "blue card") illegal immigrants to obtain a green card, or LPR status, within five years — faster than many legal immigrants (pp. 1001, 1065).
- Waives several grounds of inadmissibility for illegal immigrants (including public charges, absconders, deportees, and those who commit document fraud), but not for legal immigrants (pg. 947-48)
- Allows the Secretary to waive fees for classes of illegal immigrants while all legal applicants must pay the fees associated with their visa applications (pg. 973).
- Applicants denied legalization may have the decision reviewed in court, while applicants outside the country have no access to judicial review (pg. 1015).
- Allows illegal immigrants to work in any industry, study, and travel outside the U.S. for up to 180 days (pgs. 977-78). Legal immigrant visa holders face more work, education, and travel restrictions.
- Allows illegal immigrants to become citizens only three years after receiving a green card, while legal immigrants must still wait five years (pg. 999-1000).
- Contrary to the authors' claims, the bill does not require illegal immigrants to pay back taxes. Instead, it requires illegal immigrants seeking legalization pay "all Federal income taxes assessed." (pg. 986).
- Taxes "assessed" does not mean taxes owed. Taxes assessed are only those taxes the IRS knows are owed and officially bills to a specific individual, usually when he files a tax return or is audited by the IRS. Because illegal immigrants are unlikely to file tax returns or be audited, it is unlikely taxes will be assessed against many illegal immigrants eligible for the legalization.

**#3: Threatens to bankrupt our already strained entitlement system.** *By granting mass legalization to illegal immigrants, we will worsen the fiscal crisis. The United States currently has \$86.8 trillion in future liabilities, due largely to Medicaid, Medicare, Social Security and federal employee retirement benefits. Adding millions of illegal immigrants to these already unsustainable programs will bankrupt them.*

- Once the illegal population is granted legalization, they will be eligible for federal welfare benefits through their U.S.-born children. Once granted LPR — including more than 2 to 3 million within five years after the bill's enactment (DREAM / Blue Card) — they themselves will be eligible for even more federal welfare benefits **and** Obamacare.
- Costs will only increase once citizenship is achieved and will extend to our nation's retirement programs. **It** is estimated that this bill will cost taxpayers at least \$2.5 trillion in Medicare and Social Security alone — above any taxes paid in.<sup>1</sup> In addition, the long-term unfunded liability for Obamacare would grow another \$2 trillion.<sup>2</sup>

---

<sup>1</sup> Caroline May, Expert, Bipartisan Immigration Reform Plan Will Cost Trillions, The Daily Caller (January 31, 2013) at <http://dailycaller.com/2013/01/31/expert-bipartisan-immigration-reform-bill-will-cost-trillions/>

<sup>2</sup> US. Senate Budget Committee Republicans, Major Flaw in the Gang of Eight Plan Could Cost Taxpayers Trillions, Budget Background (April 4, 2013), at <http://www.budget.senate.gov/repUBLICan/public/index.cfm/budget-background?ID=76f66efd-5f90-4301-aa2b-fdcfd18fe744>

**#4: Contains dangerous loopholes that threaten national security.** *Instead of strengthening interior enforcement, this bill hampers the ability of law enforcement to ensure that instant legalization (RPI) applicants and future illegal immigrants pose no threat to national security.*

- Effectively suspends deportations and other law enforcement efforts for up to two and a half years after enactment (pg. 953-54). Illegal immigrants apprehended for any reason by any law enforcement agency during this period who appear "prima facie eligible" must be given an opportunity to apply for instant legalization and may not be removed (pg. 962-63).
- Requires the implementation of a new electronic visa exit system that is less secure than the biometric system already required by law (pg. 1456).
- The bill **rolls** back the mandate in current law by 6 different statutes dating back to 1996 for a biometric exit system at all ports of entry. Instead of forcing the administration's hand, it gives in to the executive branch's obstinacy over at least 2 administrations and provides for an electronic exit system at only air and sea ports. It also includes yet another biometric pilot, which is unnecessary given that a 2009 DHS pilot already proved that such a system is a cost efficient, achievable, and effective (pgs. 1456-57).
- ICE may not detain or remove an RPI — for any reason — until DHS revokes status, subject to appeal.
- **DHS** may only revoke RPI status if person (a) is no longer eligible; (b) knowingly used RPI documents for fraud, or (c) was absent from country longer than a 180-day period (pg. 979-80)
- Requires DHS to allow those in deportation proceedings or subject to a deportation order to apply for instant legalization (pg. 962-64).
- Eliminates the requirement of an in-person interview for instant legalization applicants (pg. 956),
- Makes Hong Kong, a region under the control of the People's Republic of China, eligible for the Visa Waiver Program, allowing individuals from that region to come to the United States without State Department scrutiny (pg. 1779).
- Allows the Secretary of Homeland Security or the Attorney General to grant legal status to "stateless persons," as designated by the Secretary of State. A large number of national security cases involve aliens from the Palestinian Authority, which could fall under this provision (pg. 1476).
- As noted by the union representing U.S. Citizenship and Immigration Services (USCIS) adjudicators, USCIS is unequipped to securely process the 11 million applications for instant legalization and 4 to 5 million legal immigrant applications required by the bill over the next **ten** years.

**#5: Cedes control of immigration law to the Secretary of Homeland Security and other unelected bureaucrats.** *This bill would use waivers and grants of discretion to delegate Congress's responsibility to regulate immigration and secure our borders to the President, the DHS Secretary, and other unelected cabinet-level bureaucrats. This will continue the trend toward our founding fathers' worst fear--an all-powerful, unaccountable Executive Branch.*

- As discussed above, this bill allows the DHS Secretary to determine how we will secure our borders, and relies on the Secretary's unmitigated discretion to determine when they are secure

- Gives the Secretary wide discretion to ignore immigration laws. According to the National Review, S. 744 contains "129 instances of what the DHS secretary "shall" do to implement its myriad provisions, 102 mentions of what she "may" do, and 35 cases in which implementation will be based on what the Secretary "determines."<sup>3</sup> The new legalization (RPI) visa is littered with more than 20 discretionary elements, in which implementation will be based on the Secretary's discretion (pgs. 943-1000).
- States that illegal immigrants who have been convicted of **three** or more misdemeanors for separate incidents are ineligible for instant legalization (pg. 946). However, the Secretary may use her discretion to ignore (i.e., waive) that requirement for "humanitarian purposes," "to assure family unity," or if she determines "it is otherwise in the public interest" -- a catch-all exception that could be used for virtually every criminal alien (pg. 949).
- Gives Secretary authority to award instant legalization to illegal immigrants who engage in fraud (pg. 949-950).

**#6: Rewards criminals and punishes law enforcement.** *By providing legal status to illegal immigrants who are known gang members or are convicted of crimes, such as fraud and drug trafficking, the bill rewards criminal behavior. It also contains provisions that will prevent law enforcement from protecting the people they serve.*

- Illegal immigrants may be granted instant legalization and allowed to remain in the country despite having committed "crimes involving moral turpitude" (ranging from theft to sexual abuse), state drug-trafficking offenses, prostitution, or commercial vice. They may also be fugitives from deportation orders. (pg. 949-50, 1233-37).
- Contains a provision making gang members inadmissible and deportable, but it will be nearly impossible to apply and all gang members current *inside* the country will be exempt. (pg. 1543- 47). Thus, it continues to allow gang members into the country.
- Current law prohibits any instance of passport or immigration document fraud, but S. 744 changes the law to only prohibit production of three or more fraudulent documents. People who are criminals under current law would be allowed to go free if S. 744 is enacted. (pg. 1559-63).
- The bill empowers bureaucrats to second-guess the decisions of law enforcement officers. The highly-politicized DOJ Civil Rights Division is directed to establish use-of-force and cultural sensitivity training to micro-manage DHS law-enforcement officers efforts to defend themselves and protect our borders. (pg. 919-21). It also establishes an overly broad prohibition on "racial profiling" which will lead law enforcement to fear litigation from their day-to-day actions. (pg. 1465-66).
- Prohibits information obtained from the instant legalization process from being used to deport illegal immigrants who do not qualify, and provides a \$10,000 criminal fine for any such use. (pg. 1021). That means this bill would protect illegal immigrants by criminalizing law enforcement efforts.

**#7: Expands government by creating new bureaucracies, authorizing new spending, and calling for endless regulations.** *At a time when government spending consumes more than 25% of our economy each year, this bill creates even more unnecessary and wasteful government*

---

<sup>3</sup> Andrew Stiles, The immigration Power-Grab, National Review Online (April 23, 2013), at <http://www.nationalreview.com/article/346345/immigration-power-grab>

*programs and makes even more spending promises that Congress lacks the money to keep.*

- Uses a budget gimmick to designate more than \$8 billion as "emergency spending" and bypass all budgetary discipline.
- Creates a "comprehensive immigration reform trust fund" that is initially funded largely by \$8.3 billion in taxpayer dollars and completely controlled by DHS, with no control by Congress (pg. 872- 96)
- Expands the already bloated bureaucracy at DHS by, among other things, expanding USCIS's Office of Immigration Ombudsman to cover all of DHS, presumably so that it may provide advice and assistance to aliens in deportation and other proceedings (pg. 928); authorizing an unspecified amount of spending to create an unnecessary new Border Oversight Task Force, composed entirely of people selected by President Obama (pg. 922-27); and authorizing \$20 million to establish a Bureau of Immigration and Labor Market Research within USCIS to deal with the labor issues created by the new now of low-skilled immigrants from the W visa program (pg. 1796).
- Authorizes an **unlimited** appropriation to implement the legalization of illegal agricultural workers (pg. 1077).
- Creates overlapping and potentially duplicative programs, including: authorizing an unlimited amount no less than \$10 million to expand USCIS's newly-named Office of Citizenship and New Americans to cover new programs for aliens who may want to naturalize (pg. 1277-1281); establishing a "Task Force on New Americans" comprised of Obama Administration cabinet members (pg. 1282-1285); establishing a nonprofit corporation to provide citizenship education to low-income immigrants, and award grants (pg. 1285-1289); authorizing at least \$100 million in grants to immigrant advocacy groups to assist the illegal population in applying for legal status (pg. 1289-1291).

**#8: Breaks our already dysfunctional legal immigration system.** *The current immigration system is slow, overly complex, and overwhelmed by the number of immigrants seeking to enter the country. Rather than address these problems, this will add more than 30 million new immigrants, make the Immigration and Nationality Act so complex that even lawyers cannot understand it.*

- It will overwhelm the system with new immigrants According to **NumbersUSA**,<sup>4</sup> the bill brings in at least 33 million immigrants. The legalization would add about 11 million people to the legal workforce in America from the current illegal immigrant population. In addition, the bill proposes to eliminate the visa backlog, adding as many as an additional 45 million people, and future flow would add about 15 million.
- Instead of just simplifying and fixing the current two-track visa system, it adds a third track — misnamed a "merit-based" visa — using a complicated point system with over 27 **different** factors (some duplicative of the other categories) for determining an alien's eligibility for a visa. Many of the factors change and fluctuate yearly based on the economy. The number of immigrants allowed each year also fluctuates based on a complicated formula derived from the Bureau of Labor and Statistics. (pg. 1146-1161).

---

<sup>4</sup> Neil Munro, *Immigration Bill to Bring in at least 33 Million People, Says Group*, The Daily Caller (April 26, 2013), at <http://dailycaller.com/2013/04/26/anti-immigration-group-immigration-bill-to-bring-in-at-least-33-million-people/>

- It complicates the current family and employment based system. It adds several exemptions and waivers to each category, as well as new paperwork requirements. The new paperwork and adjudication of the new waivers will slow down processing of visas and substantially increase the visa backlog.
- This bill enables and encourages more lawsuits, which allow illegal immigrants who are ineligible for instant legalization to remain in the country for extended periods of time. These provisions include:
  - Giving immigration judges the right to appoint lawyers for aliens at taxpayer expense, a privilege U.S. citizens do not enjoy in other types of civil cases (pg. 1493-1496).
  - Granting illegal immigrants who are initially denied legalization the right to both an administrative appeal and a lawsuit in federal district court (pg. 1011-1012), which is allowed to essentially retry the case (pg. 1013). This means illegal immigrants can submit incomplete applications first, and come up with evidence at a later point in time to be considered during a lawsuit.
  - Affirmatively inviting lawsuits challenging validity of laws (pg. 1018-1019), and expressly authorizing the filing of class actions (pg. 1019).

**#9: Contains earmarks that benefit specific states, industries, and interest groups.** *As is the case with almost every massive bill, the authors of this bill included earmarks that benefit only one specific industry, one specific state, or a few special interest groups. These earmarks for favored constituencies should remind us why the American people do not trust Congress.*

- Creates a new \$50 million grant program for non-profits with "qualifications, experience, and expertise in providing quality services to immigrants, refugees, persons granted asylum, or persons applying for such statuses" to, among other things, market to illegal immigrants information regarding the "eligibility and benefits" available to them (pg. 1022-1025).
- Includes 20,000 visas for the meat packing industry (pg. 1839).
- Includes 5,000 special visas for displaced Tibetans over a three-year period. (pg. 1488-1490).
- Increases funding for the Tucson U.S. Attorney's office, the Tucson public defender's office, and the Tucson U.S. Marshal's office, without specifying similar increases in resources for other border states (pg. 901-903).
- Provides 10,500 work visas solely to Irish immigrants (pg. 1738-1740).
- Allows temporary admission for maintenance workers on cruise ships (pg. 1792-1793)\_
- Allows ski instructors to temporarily enter the U.S. using the same visas we give to visiting professional athletes and musicians (pg. 1786).
- Creates a new grant program to purchase satellite phones, at government expense, for people who live in border regions (pg. 913).

**#10: Dismantles domestic enforcement of our immigration laws.** *Real immigration reform would establish strict enforcement of the law against US. employers who hire illegal immigrants and the illegal immigrants who might slip past our border defenses. This bill does the opposite of that. It will ignore current problems and render our most effective tools inoperable.*

- Prohibits immigration law enforcement from detaining any illegal immigrants if they

appear to be eligible for instant legalization (pg. 962).

- Limits the ability of Border Patrol to return illegal border crossers to Mexico during nighttime hours, when crossings generally occur, absent certain circumstances (pg. 941-943).
- Limits enforcement actions at certain locations, including college campuses and hospitals, essentially turning public places into sanctuary shelters (pg. 1614-1620).
- Places burdensome document-production requirements on the government every time it wishes to deport an illegal immigrant, even if that immigrant concedes they are not here legally (pg. 1494).
- Opens the door to visa overstays by ignoring a nearly 20-year old law requiring an effective biometric exit system and replacing it with a less effective one; and requires yet another pilot program to use biometrics only at a select few airports (rather than all air, sea, and land ports, as currently required by law). This will allow people to remain in the country when their visa expires, leaving a huge gap in security (pg. 1456-1459).
- Completely ignores sanctuary cities that thwart the rule of law and release dangerous criminal aliens back into the community to commit more crimes.
- Repeals E-Verify and requires the Secretary to replace it with an unproven system from which day laborers are exempt, and does not require one to be fully in place for five years or perhaps even longer. (pg. 1412-1414).

**#11: It is over 1000 pages long. No comment necessary.**

**#12: The Gang of 8 Oppose All Amendments that "upset" the "delicate balance."** *Throughout the Judiciary Committee Mark-up, all attempts to materially improve the legislation were voted down with members of the Gang of 8 saying that the "delicate balance" of their agreements could not be disrupted, no matter the common sense content of the amendments. Any future amendments on the Senate floor will either continue to be opposed— OR — will strategically be supported only for the purpose of providing cover for their own involvement in the process.*