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President Bush Holds Immigration Enforcement and Homeland Security Hostage to Amnesty Plan

JANUARY 24, 2007, WASHINGTON, DC—In his State of the Union address, President Bush called on Congress to pass "comprehensive immigration reform" to secure the borders, enhance interior enforcement, create yet another avenue by which employers may import foreign workers (the United States already has no fewer than nine temporary worker, or nonimmigrant, programs), and legalize the 12 to 20 million illegal immigrants currently in the United States. A document posted on the White House website yesterday touts several steps the Administration is taking on immigration and provides additional details regarding what he wants from Congress.

President Bush, in both his speech and the White House document, insists that we cannot control illegal immigration unless we simultaneously create a new program to import foreign workers and grant amnesty to illegal immigrants already here. This claim would sound somewhat more sincere if he were already using every tool at his disposal to secure the borders and control illegal immigration.

Among the many immigration-enforcement actions the President is authorized—and in some cases required--by law to take, but which he has to date refused to take, are the following:

Full implementation of US-VISIT

- Section 110 of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) requires the administration to "develop an automated entry and exit control system that will collect a record of departure for every alien departing the United States and match the records of departure with the record of the alien's arrival in the United States." DHS created US-VISIT in response to this requirement.
    - Currently, however, only about one percent of all land-border crossers are subjected to US-VISIT processing upon entry into the United States because most Mexicans and Canadians have been exempted from the program.
    - Moreover, DHS recently acknowledged that it has no intention of ever implementing the exit controls required by law. Without an exit system, US-VISIT is unable to fulfill its main purpose: to allow immigration authorities to identify and locate aliens allowed into the United States on a temporary visa who remain illegally after the visa expires. The President has sworn an oath to

faithfully execute the laws and this law is unambiguous. It requires entry *and* departure tracking, and it applies to "every alien."

- An alien presenting a border crossing identification card (i.e., a laser visa) is not permitted by law to cross over the border into the United States unless the biometric identifier contained on the visa matches the appropriate biometric characteristic of the alien. By exempting Mexico from participation in US-VISIT, however, the President ensured that this law would not be enforced, since the biometric machine readers are for US-VISIT processing. Instead, CBP inspectors are supposed to visually confirm the match.

Full expansion of expedited removal

The Secretary of DHS is authorized to expand expedited removal procedures to apply to any aliens who have not been admitted or paroled into the United States and who cannot affirmatively prove that they have been physically present in the United States continuously for two years immediately prior to this determination.

- Last January, the administration expanded expedited removal procedures to apply to aliens apprehended within 100 miles of a land border who cannot prove that they have been present in the United States for 14 days.

Serious worksite enforcement to remove the jobs magnet

We applaud the administration for the high-profile raids conducted in recent months, but a handful of raids does not indicate a commitment to worksite enforcement, particularly when the vast majority of illegal immigrants arrested in those raids are released within a matter of hours, despite having committed serious crimes (e.g., document fraud, identity theft, social security fraud) in addition to their immigration violations.

- If the President publicly touted the Basic Pilot program as a tool for employers to verify the legal status of their workers and avoid liability for hiring illegal immigrants, many more businesses would be using it. Instead, most are unaware of its existence.
- The President has the authority to order the Social Security Administration (SSA) to send "no-match" letters to every employer with an employee whose name and Social Security number do not match, rather than only to employers with 10 or more employee mismatches, as is current practice.
- When the recent Swift raids highlighted a longstanding loophole in the Basic Pilot—aliens who steal, purchase or borrow someone else's legitimate Social Security number and name will not be flagged as illegal—the President could have directed the Social Security Administration to immediately identify all accounts into which more than one employer reports income and notify account owners that their identities may have been stolen.

- The President could order ICE to conduct random audits of I-9 records, particularly in industries known to employ large numbers of illegal immigrants.

Information sharing among the three immigration agencies and with other law enforcement agencies

The failure to share critical law enforcement information has been identified repeatedly as one of the primary reasons why 19 individuals were able to murder almost 3,000 Americans on September 11, 2001. More than five years later, ICE, CBP, and USCIS still refuse to share critical information with each other and with non-DHS law enforcement agencies, and the non-DHS agencies reciprocate by refusing to share information with the immigration agencies. The result, once again, is that aliens intent on harming Americans are able to game the immigration system and take up residence in the United States without raising any red flags.

- The first immigration bill passed after the September 11 attacks, the Enhanced Border Security and Visa Entry Reform Act of 2002, required the administration to make interoperable all security databases relevant to determining aliens' eligibility for entry. Almost five years later, DHS has no plan to accomplish this, according to the Inspector General.
- USCIS, which is responsible for conducting background checks on aliens who apply for status from within the United States and on immigrants' sponsors, does not have adequate access to relevant national security data, nor do USCIS employees have adequate training on the systems they can access. The Inspector General has documented these and other problems with USCIS background checks.

Immigration fraud investigations

Aliens who commit fraud, use false or altered documents, or make misrepresentations on applications for immigration benefits are ineligible for the benefits, according to the law.

- Not only does USCIS grant benefits to aliens despite indications of, and sometimes even evidence of, fraud or misrepresentation, ICE rarely investigates cases of alleged benefits fraud referred by USCIS.
- Immigration fraud investigations and convictions have declined precipitously since 1992. USCIS estimates that ICE declines to investigate over 70 percent of the benefits fraud referrals it receives. It is exceedingly rare for either agency to attempt to rescind a benefit once it is granted.
- Despite the fact that at least nine known terrorists have engaged in marriage fraud to prolong their stay in the United States, ICE refuses to investigate single-instance marriage fraud allegations.

Detention and removal of criminal aliens

IIRIRA makes detention pending removal mandatory for all aggravated felons and other aliens who are inadmissible or removable due to criminal convictions.

- According to the Inspector General, of the 345,006 criminal aliens apprehended from FY 2001 through FY 2004, 27,947 were released from detention before they could be removed.

The IG was unable to determine why they were released since ICE does not track that information.

Section 307 of the Immigration and Nationality Act states that, upon notification by DHS or the AG that a foreign government refuses or unreasonably delays the return a national of that country who is ordered removed from the United States, the State Department shall suspend the issuance of immigrant and/or nonimmigrant visas to nationals of that country.

- A handful of governments, including Iraq and China, routinely refuse to issue travel documents to their nationals who have been ordered removed from the United States, but this provision is ignored.

Reduce incentives

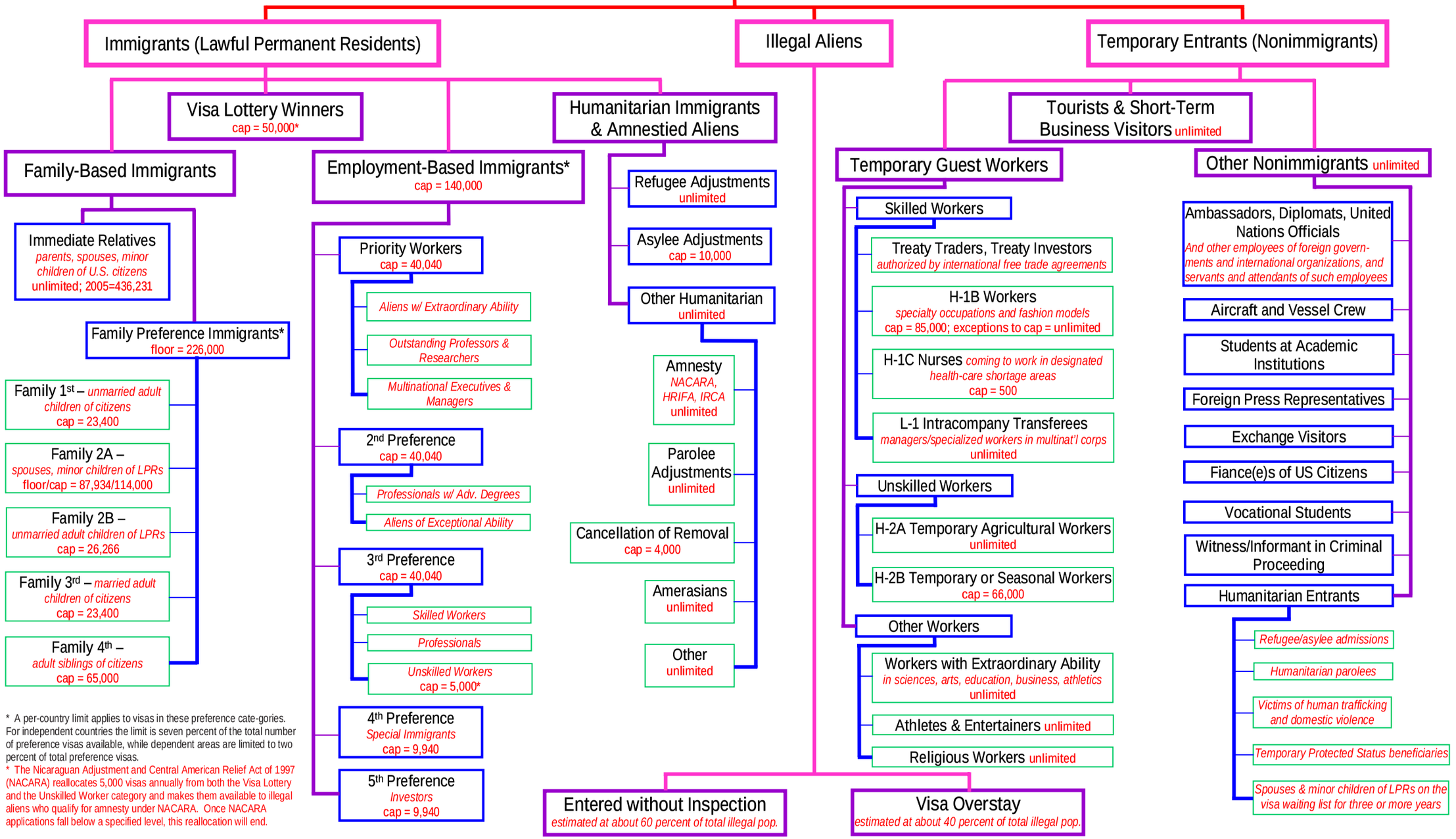
Section 642 of the 1996 IIRIRA prohibits states and localities from adopting policies, formally or informally, that bar employees from communicating with DHS regarding the immigration status of individuals.

- Neither of the two sanctuary states, Maine and New Mexico, nor any of the multitudes of sanctuary cities has been challenged by DHS or DOJ for violating this law.
- Soon after the 1996 law passed, the City of New York challenged the sanctuary provision in court. The court upheld the law and ordered the City to rescind its sanctuary policy. Instead, New York modified its policy slightly, but the Federal Government has not challenged it.

Section 505 of IIRIRA prohibits public institutions of higher education from offering in-state tuition to illegal aliens unless they also offer it to every citizen of the United States.

- Neither DHS nor the Justice Department has challenged any of the nine or so states that have passed laws that violate this ban.

CATEGORIES OF MIGRANTS RECOGNIZED UNDER U.S. LAW



* A per-country limit applies to visas in these preference cate-gories. For independent countries the limit is seven percent of the total number of preference visas available, while dependent areas are limited to two percent of total preference visas.

* The Nicaraguan Adjustment and Central American Relief Act of 1997 (NACARA) reallocates 5,000 visas annually from both the Visa Lottery and the Unskilled Worker category and makes them available to illegal aliens who qualify for amnesty under NACARA. Once NACARA applications fall below a specified level, this reallocation will end.