

# Worse Policy Buried in Bad Policy

## What You Haven't Heard About S. 2611, The Comprehensive Immigration Reform Act of 2006

### TITLE I—BORDER ENFORCEMENT

§114—Requires the Secretary of State, in coordination with the Secretary of Homeland Security, to establish a program to improve “the security of Mexico’s southern border” by, among other things, determining the “financial and technical support needed by Guatemala and Belize from Canada, Mexico, and the United States” to secure their borders, providing law enforcement assistance to Guatemala and Belize to help them dismantle human smuggling operations, and establishing a program to “provide needed equipment, technical assistance, and vehicles to manage, regulate, and patrol” their borders with Mexico.

§117—Requires the Secretary of State to work with Mexican officials to educate Mexican nationals regarding eligibility for nonimmigrant status in the United States **to ensure they are not exploited while working here**; to “encourage circular migration, including assisting in the development of economic opportunities and providing job training for Mexican nationals.”

This is the same section that requires consultation with Mexico before we build a border fence in order to “solicit the views of affected communities; lessen tensions; and foster greater understanding.”

§124—Requires DHS to come up with a schedule within six months of enactment for implementing the US-VISIT system at all land border ports (the statutory completion date was December 2005), “developing and deploying” the exit part of the entry-exit system that has been in the law since 1996, and making all immigration screening system interoperable (the Enhanced Border Security and Visa Entry Reform Act of 2002 required the same thing). The Intelligence Reform and Terrorism Prevention Act of Dec. 17, 2004 required such a schedule within six months of enactment, too.

§131—Requires DHS to end their “catch and release” policy with regard to so-called Other than Mexicans (OTMs) by October 1, 2007, by detaining such OTMs pending removal or lawful admission. Secretary Chertoff testified before the Senate Judiciary Committee on October 18, 2005, that he would end the policy within one year. Thus far, it has been ended only for nationals of one country—Brazil.

§135—Postpones the deadline for implementation of the requirement that U.S. citizens carry passports or other secure documents denoting identity and citizenship status when re-entering the United States from Mexico, Canada, and the Caribbean (this was a recommendation of the 9/11 Commission) from Jan. 1, 2008 to “the later of June 1, 2009, or 3 months after” the Secretary of State and the Secretary of Homeland Security certify

that Passport Cards or some alternative document has been issued and publicized widely. Applicants for passport cards would have to provide exactly the same information to the State Department as is required for a passport and pay a similar fee, but a passport is more secure.

Says that, after implementation of the passport requirement, a US citizen who doesn't have an appropriate travel document can cross the border and return anyway, as long as he is not gone more than 72 hours. It also provides for a "grace period" for citizens who don't know about the requirement or simply don't have the proper documents.

## TITLE II—INTERIOR ENFORCEMENT

§211—Authorizes DHS to grant voluntary departure, in lieu of formal removal, to all aliens except aggravated felons and national security threats (assuming we have fingerprints on file for all terrorists). This would appear to include OTMs, thus changing "catch and release" to "catch, detain briefly, and release."

§216—Prohibits the granting of any immigration benefit or document until all "appropriate background and security checks, as determined by the Secretary of Homeland Security" are completed and "any suspected or alleged fraud relating to the granting of any status (including the granting of adjustment of status), relief, protection from removal, or benefit under this Act" is "investigated and resolved." Although this should already be the case, it is not. If USCIS cannot accomplish this with regard to its current workload, there is simply no possibility that it can do it once literally millions of applications for amnesty and work permits, along with two to three times the current number of applicants for legal immigration (many of which will be filed from within the United States and so have to be processed by USCIS), flood the agency. There are only two possible results: (1) the entire immigration process will grind to a halt as backlogs skyrocket; or (2) DHS will "determine" that only a cursory background check is necessary and, magically, there will be no "suspected or alleged fraud." The latter result, clearly the most dangerous for homeland security, is also the most likely.

§229—Limits the ability of the 600,000 state and local law enforcement personnel in the United States to serve as a force multiplier for the roughly 2,000 ICE special agents responsible for all interior enforcement by restricting the former to "assisting in the enforcement of the *criminal* provisions of the immigration laws." Thus, if a state trooper, for example, pulls over an illegal alien for speeding and the illegal alien turns out to have crossed the border illegally (a crime), the trooper can detain him and turn him over to ICE. But what happens if the alien turns out to have violated the terms of his visa (an administrative violation committed by at least two of the 9/11 hijackers)? Does the trooper have to let the alien go?

### **TITLE III—UNLAWFUL EMPLOYMENT OF ALIENS**

§301—Mandates the use of the electronic employment authorization verification system by all employers in the United States, but fails to set a date by which such use is required. Instead, the provision requires all employers to use the system “on or after the date that is 18 months after the date that not less than \$400,000,000 have been appropriated and made available to implement this subsection.” Phasing in employers over a period of time makes much more sense since it requires less of an initial investment and allows the system to be tested gradually.

Only requires employers to use the system to verify new hires, which means that all illegal aliens, including those few who would not qualify for one of the amnesties in the bill, who are currently employed would be grandfathered in, as long as they kept their current job.

Addresses penalties for employers who violate the law either by hiring illegal aliens or by failing to use the verification system. While it is true that the bill doubles most of the fines for employers, that doesn’t mean much when the fine is going from \$250 per violation to \$500 per violation. These paltry fines are another unfortunate indicator that the bill’s supporters either do not understand the importance of removing the job magnet or aren’t serious about controlling illegal immigration.

Ostensibly debars businesses from receipt of Federal contracts if they hire illegal aliens, but guts the provision by adding a waiver:

*After consideration of the views of any agency or department that holds a contract, grant, or cooperative agreement with the employer, the Secretary may, in lieu of debarring the employer from the receipt of new Federal contracts, grants, or cooperative agreements for a period of 5 years, waive operation of this subsection, limit the duration or scope of the debarment, or may refer to an appropriate lead agency the decision of whether to debar the employer, for what duration, and under what scope in accordance with the procedures and standards prescribed by the Federal Acquisition Regulation. However, any proposed debarment predicated on an administrative determination of liability for civil penalty by the Secretary or the Attorney General shall not be reviewable in any debarment proceeding. The decision of whether to debar or take alternate action under this subparagraph shall not be judicially reviewed.*

### **TITLE IV—NONIMMIGRANT AND IMMIGRANT VISA REFORM**

§401—Requires a government-wide study of the impacts of immigration—including the impacts on the environment, quality of life, the economy, transportation infrastructure, education, housing, health care, and the criminal justice system—to be completed and presented to Congress at least 90 days before any new regulation that would increase the number of aliens who are eligible for legal status may take effect.

§403—Automatically waives most immigration violations that an applicant for the new H-2C guest worker program committed prior to the effective date of the bill.

States that H-2C status is to terminate if the alien is unemployed for 60 or more consecutive days. However, there is a major exception:

*The period of authorized admission of an H-2C nonimmigrant shall not terminate if the alien is unemployed for 60 or more consecutive days if such unemployment is caused by--*

*(I) a period of physical or mental disability of the alien or the spouse, son, daughter, or parent (as defined in section 101 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2611)) of the alien;*

*(II) a period of vacation, medical leave, maternity leave, or similar leave from employment authorized by employer policy, State law, or Federal law; or*

*(III) any other period of temporary unemployment caused by circumstances beyond the control of the alien.*

So, if an H-2C worker is laid off two weeks after arrival (something that is beyond his control) and can't find another job, he can still remain in the United States for the full three years of authorized stay.

The bill does not address whether the accompanying spouse and children of an H-2C worker (they are to be granted H-4 visas) are also entitled to work in the United States. If they are, it could mean the availability of even more cheap labor under a bill whose main purpose appears to be the importation of as many foreign workers as possible in the shortest possible time. In any event, **the fact that family members can accompany the workers makes it less likely that they will ever leave (not that they have to, since they can all apply for lawful permanent residence), and certain that American taxpayers will have to subsidize their education, health care, and other costs.**

§404—Sets out the “obligations” of employers of H-2C workers, including what they must do to recruit U.S. workers before importing foreign labor. The short answer, according to this section, is: virtually nothing, according to this section. Employers are required to submit a copy of the job announcement to the State Employment Service Agency and post it at the worksite. The employment agency is required to post it on the internet, notify labor organizations in the area, and send qualified candidates to the employer.

It appears that, unlike with the H-1B program, the Department of Labor is not required to make a list of petitions for H-2C status available to the public (§212(n)(1)(G) of the Immigration and Nationality Act requires Labor to make public the list of H-1B petitioners).

Addresses whether employers in high unemployment areas can import foreign labor:

*[T]he Secretary of Homeland Security may not approve any employer's petition under subsection (b) if the work to be performed by the H-2C nonimmigrant is **not agriculture based** and is located in a metropolitan or micropolitan statistical area (as defined by the Office of Management and Budget) in which the unemployment rate for workers who have not completed any education beyond a high school diploma during the most recently completed 6-month period averaged more than 9.0 percent.*

Apparently, the bill's supporters have decided that agricultural work is a job Americans should be prohibited from doing. Under this language, it appears that DHS may approve an employer's petition if the work is agriculture based and located in a high unemployment area, even though H-2Cs are not supposed to perform agricultural work at all (that's what the H-2A visa is for).

§407—Contradicts §404 by requiring employers petitioning for H-2C workers to post the job announcement on an internet-based job registry and to maintain records for one year describing why the employer failed to hire any US workers who may have applied.

*States that permanent, employment-based immigrant visas will be made available to H-2C "temporary" workers who want to stay.* The H-2C employer can petition at any time for the worker to stay permanently or, after four years as an H-2C nonimmigrant, the worker can self-petition for permanent residence. It also requires DHS to extend the authorized stay of an H-2C worker for as long as it takes to make a final determination on an application for adjustment to permanent resident status, despite the six-year maximum established for H-2C visas.

§409—Requires countries of nationals participating in the H-2C program to negotiate agreements with the US to do a variety of things, like accept back their nationals who are deported. Left unanswered, though, is what happens if the countries refuse to negotiate?

§410—Requires DHS to justify *not* issuing a large enough share of available S visas (the number of which the bill increases from 200 to 1,000), which are for witnesses to organized crime and, under the bill, government dealings with weapons of mass destruction. In fact, DHS has to describe the "efforts" it made "to admit such nonimmigrants." Perhaps DHS should encourage more organized crime or plant some WMDs?

§413—Expands the Visa Waiver Program by making eligible any country in the European Union that is providing material support (defined as at least one battalion) to the United States in Afghanistan or Iraq. The provision is designed to include Poland, without actually mentioning Poland, despite the fact that Poland has a visa denial rate of about 17 percent which has prevented it from meeting the requirement for the VWP of a denial rate of under 3 percent. Never mind the fact that we already have a rapidly growing population of illegal Poles or that Polish organized crime is world-renowned

for its violence – the Russian mob hires Poles as body guards because they will kill the entire family of someone who threatens their employer.

## TITLE V – BACKLOG REDUCTION [and massive legal immigration increase]

**§501—More than doubles, and could even triple, the current legal immigration level of about one million per year by drastically increasing the number of both family-based and employment-based immigrant visas. The increases are permanent, despite what the name of this Title would imply.**

§503—Reserves each year from 2007 through 2017 30 percent of all employment-based visas for unskilled workers for “qualified immigrants who were physically present in the United States before January 7, 2004.” Since “physically present” is a euphemism for “illegally present,” and the amnestied aliens who are supposed to wait until everyone on the visa waiting list is processed (“go to the back of the line”) before they can adjust to permanent residence don’t count against the numerical caps anyway, who are these reserved for?

Exempts all special immigrants from numerical limits on employment-based visas.

§505—Exempts unskilled workers, along with their spouses and dependents (who likely also will be unskilled workers, though not necessarily in a shortage occupation) seeking admission to perform labor in “shortage occupations” from the cap on employment-based visas. Apparently, the theory is “once a shortage occupation, always a shortage occupation,” since the bill would import permanent workers to fill the jobs.

**§506—Invites any alien outside the United States who is determined by a consular or immigration official to be a minor under 18 years of age, “for whom no parent or legal guardian is able to provide adequate care, who faces a credible fear of harm related to his or her age; who lacks adequate protection from such harm; and for whom it has been determined to be in his or her best interests to be admitted to the United States; or who is...determined by such official to be a female who has a credible fear of harm related to her sex; and a lack of adequate protection from such harm” to come to the United States as a nonimmigrant, get refugee cash benefits and other assistance, and then adjust to permanent resident status within a year. These aliens would not be fingerprinted until after they enter the United States, and then DHS is required to conduct a thorough background check within six months *after* their entry (so much for the requirement in §216). Other than Australia, Canada, and Western Europe, women from around the world could argue that they lack adequate protection. Moreover, the provision doesn’t address who is going to “provide adequate protection” to all the children once they get to the United States.**

§507—Creates two new open-ended student visa categories for aliens wanting to study in high-tech fields, both of which get special rules allowing them to get on the fast-track to permanent residence. Shouldn't the goal be to encourage American kids to pursue studies in these fields?

§508—Exempts from the employment-based visa cap aliens with an advanced degree in science, technology, engineering, or math who have been employed in a related field in the United States for the preceding three years.

Exempts from the employment-based visa cap aliens with extraordinary ability, outstanding professors and researchers, and physicians who have agreed to work in an area designated by HHS as having a shortage of health care professionals or at a VA facility.

Increases the H-1B cap from 65,000 to 115,000 per year, and then allows this cap to increase by 20 percent each year indefinitely if employers use all the visas (of course, there is no mechanism to allow the cap to drop back down at any point). Then it goes on to exempt aliens with an advanced degree in science, technology, engineering, or math.

Takes two-thirds (36,667) of the visas currently allocated to the Visa Lottery and allocates them to a new visa category for aliens with an advanced degree in science, technology, engineering, or math. It instructs the Secretary of State, in consultation with Labor and Commerce, to determine which of these degrees will be in the most demand in the future and to prioritize the granting of these visas to aliens with that (or those) degree(s). In other words, the government is to figure out where the hottest, high-skill job demand will be and then import foreign workers to take them. This will further discourage Americans from entering these high-tech fields and increase already record-high unemployment among native-born high-tech workers.

§521-532—Repeats many of the H-1B and permanent employment-based visa changes already made by the bill, but adds some new twists including: additional exemptions from the caps; unlimited employment-based visas for aliens with advanced degrees (in any field) from US universities and for aliens willing to perform in labor shortage occupations (at least until they get their green cards); extensions of stay for skilled workers who have filed applications for adjustment to permanent residence; **a streamlined labor importation process for employers who already import large numbers of foreign workers; and a provision that allows employers themselves to propose a prevailing wage of their choice if the Labor Department is too swamped with labor certification applications to respond within 20 calendar days.**

**TITLE VI—WORK AUTHORIZATION AND LEGALIZATION OF UNDOCUMENTED INDIVIDUALS (aka amnesty)**

§601—**Amnesty 1**—Includes a blanket amnesty for illegal aliens who have been in the United States for at least five years.

**Amnesty 2**—Includes a three-step amnesty (1. Deferred Mandatory Departure; 2. H-2C “temporary worker” status; and 3. lawful permanent residence) for illegal aliens who have been in the United States for two to five years.

Actually encourages visa violations by stating that “an alien who has violated any conditions of his or her visa shall be considered not to be legally present in the United States.” Say an alien came here as an H-1B worker five years ago, for example. Normally, his visa would expire in one year and would not be renewable. Rather than going through the trouble of finding an employer to sponsor him for permanent residence, this provision says he can just violate his visa and then claim amnesty.

Invites fraud by allowing aliens to “prove” employment history with sworn affidavits from non-relatives and remittance records, among other easily counterfeited documents. In addition to the fact that we know that the largest fake-document producing cartel operating in the United States (the Castorena-Leija-Sanches cartel) is already gearing up to provide all the evidence an alien will need to qualify for any of the amnesties in this bill, a drug dealer could easily establish his gainful employment by presenting records of remittances he sent to his family (or his supplier) back home.

It makes illegal aliens wanting amnesty pay at least some of the back taxes they owe (they only have to pay for the time they worked after April 5, 2001), but absolutely prohibits prosecution of or penalties of any kind for employers who knowingly hired illegal aliens and/or failed to pay taxes and withholding on illegal employees.

It waives inadmissibility for prior smuggling violations if the smuggling was “for humanitarian purposes, to ensure family unity, or was otherwise in the public interest.” Smuggling in the public interest?

It requires DHS to process an estimated 2.5 million applications for Deferred Mandatory Departure (DMD) within one year of when the application period begins, at the same time DHS is attempting to issue an estimated 10 million work permits to blanket amnesty applicants. DMD applicants not only require full background checks, they also must be interviewed in person before they may be approved.

It requires only applicants for DMD, not for the other three amnesties, to perhaps (the bill says a screening “may” be required) submit to a medical screening as part of the application process.

It explicitly defines “departing the United States” as stepping across the border at the port of entry and then “immediately” reentering through US-VISIT, and then it goes on

to authorize DHS to waive even that brief “departure” if it creates a hardship on family members, who are “deemed” to have departed with the principal alien anyway.

Grants all amnesty beneficiaries an amnesty from prosecution for social security fraud for using false or stolen social security numbers and it requires the Social Security Administration to correct their social security records and give them credit for work performed while in the country illegally.

§613— **Amnesty 3**—Includes a two-step amnesty (1. Blue Card; 2. lawful permanent residence) for up to 1.5 million illegal aliens who worked (or who say they worked) in agriculture for at least the equivalent of 21.6 full-time weeks over a two-year period.

Requires DHS to “establish special procedures to properly credit work in cases in which an alien was employed under an assumed name.”

Gives Blue Card holders access to Legal Services Corporation counsel for assistance with their applications for adjustment to lawful permanent residence.

§615—Allows aliens who have been working in the U.S. with H-2A “temporary” visas as shepherders, goat herders, and dairy workers to adjust to lawful permanent resident status after three years of “temporary” work.

Rolls back the already low adverse effect wage rate agricultural employers must pay H-2A workers to the January 1, 2003, level and freezes it there for three years. It also creates a special amnesty for shepherders, goat herders, and dairy workers.

§624— **Amnesty 4**—Includes an amnesty for illegal aliens who have been in the U.S. for five years and who entered the country before they reached the age of 16 (the DREAM Act).

§630—Requires DHS to expedite the processing of DREAM Act amnesty applicants, but prohibits DHS from charging an extra fee to pay for the expedited processing.

§642—Establishes Federal grants to non-profit advocacy groups to “educate, train, and support non-profit agencies, immigrant communities, and other interested entities regarding the provisions” of the bill.

## **TITLE VII--MISCELLANEOUS**

§752—Makes ice skaters eligible for P-1A nonimmigrant visas.

§753—Extends for three more years the expansion of the H-2B unskilled worker program enacted in May 2005, as part of the Iraq Supplemental.

§755—Requires the Secretary of Homeland Security, in consultation with the Secretary of State, to “conduct a comprehensive review of the immigration procedures in existence as of the date of the enactment of this Act,” and to report to Congress within 90 days of enactment. This time frame would be unrealistic even if DHS were not expected at the same time to be gearing up for the largest (by far) increase in immigration in history.

- §758—Establishes another Federal grant program to fund non-profit advocacy groups, including legal services groups, to assist aliens in applying for the various amnesties.
- §766—Postpones for 18 months the implementation deadline for the passport requirement for US citizens traveling to and from Mexico, Canada, and the Caribbean. This provision conflicts with §135.
- §773—Amnesty 5—Requires DHS to immediately grant amnesty to any alien who is a member of a persecuted religious minority (like, say, Shi'ite Muslims from Yemen, Syria, Lebanon, Saudi Arabia, Pakistan, or Indonesia), had an asylum application pending on May 1, 2003, applies, and pays a fee.**
- §775—Requires DHS to designate as a Visa Waiver country every country that meets the criteria, regardless of whether there might be reasons not to so designate a country.
- §779—Requires the President to “make a determination that the implementation” of the H-2C “guest” worker program and the amnesties “will strengthen the national security of the United States” before those programs may be implemented.