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Senate Immigration Reform No Fix for Border Security

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The Senate's immigration reform proposal would not improve border security and could actually worsen the problem of illegal immigration. The most dramatic impact of the legislation would be to allow millions of immigrants who are unlawfully present in the United States to remain, critically undermining the deterrent effect of U.S. immigration laws and border security. The legislation also provides no significant new security guarantees. To improve border security, the Senate should modify its legislation by removing the probationary status granted to individuals unlawfully present in the United States and the requirement to implement the electronic employment eligibility verification system, establish a realistic and practical temporary worker program, and implement the commonsense border security and workplace enforcement provisions of the bill.

A Flawed Security Concept. As recent experience in both the United States and Europe demonstrates, legalization measures only spur further unlawful migration. The Immigration Reform and Control Act of 1986—which legalized individuals who had resided illegally in the United States continuously for five years by granting them temporary resident status adjustable to permanent residency—is the most prominent example of amnesty. The law required a criminal background check, payment of application fees, acquisition of English-language skills, a civics requirement, and signing up for military service. Despite these measures, the law failed to curb the influx of illegal immigration.

The Senate's legislation embodies the same flawed strategy as the 1986 law. Any subsequent additional measures to enhance border security or improve immigration services would be overwhelmed by a continued flow of both illegal border crossing and overstays (individuals who enter legally but remain in the country past the period authorized by their visa).

To deter future illegal border crossing, Congress should not grant individuals unlawfully present in the United States any form of legal status (except for legitimate asylum cases) that does not require them to leave the U.S. voluntarily and undergo adequate criminal, national security, and health checks before seeking to return.

Equally troubling is the Senate's temporary worker proposal. The program as envisioned does not offer a credible, market-based alternative to hiring undocumented workers and thus will do little to discourage the flow of unlawful migration.

Ineffective, Counterproductive Triggers. The security and process triggers in the Senate legislation would not deter future unlawful presence, because individuals already here could immediately register for probationary benefits, including work

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authorization, protection from removal, and a social security number. This would only encourage others to follow their example.

Additionally, the legislation's delay in establishing a truly effective temporary worker program is unwise. An effective temporary worker program would offer an alternative to illegal entry and help achieve operational control of the border. Congress should establish a market-based temporary worker program as soon as practicable. The triggers to establishing a temporary worker program should concern whether the U.S. government has the capacity to rapidly conduct comprehensive security and health checks and adjudicate the status of individuals in any new visa program. The mistakes of the 1986 reform—which put individuals in probationary status following cursory checks and left them there for years—should not be repeated.

Finally, though a temporary worker program would contribute to the task of policing borders and coastlines, the U.S. must implement a comprehensive plan for integrated border security and achieve operational control of the border before initiating any new programs that substantially increase the number of permanent or temporary workers in the United States. This determination should be made by the Administration, subject to legislative concurrence, and should not be determined by arbitrary measures such as hiring and deploying personnel or building border obstacles.

Assessment of Security Measures: Good, Bad, Ugly. The promised security enhancements in the legislation fall into three categories: (1) common-sense and prudent measures that are not current law and should be enacted apart from the effort to address comprehensive immigration reform; (2) border security initiatives already underway that do not require endorsement in new legislation; and (3) unnecessarily intrusive or ineffective measures that hold out little real security value.

Positive Security Enhancements. Several components of the law should be implemented regardless of the fate of comprehensive immigration reform. Among the most important of them are:

- **REAL ID:** Section 1 of the Senate legislation reaffirms the importance of implementing the REAL

ID Act of 2005, and Section 306 would provide federal support, separate from existing homeland security grant programs, to aid states in implementing REAL ID.

REAL ID requires that when key identification materials, such as driver's licenses (and the documents used to obtain them), are issued at any level of government and used for a federal purpose (e.g., security checks before boarding commercial passenger planes), these documents must meet national standards of authenticity. Such documents should be issued only to persons living lawfully in the United States. To prevent tampering, counterfeiting, and fraud and to enhance privacy protections, the laws also establish standard security features for identification cards.

- **Community Policing Grants:** Section 132 authorizes the use of homeland security grants for community policing in border communities. The value of community policing is primarily to deter the types of crime that are associated with illegal human trafficking along the border (e.g., trespassing, theft, and document forgery), not to enforce federal immigration laws. Deterring this criminal activity will, in turn, make the federal government's challenge of policing the border more manageable. To help secure the border, immigration reform legislation should authorize grants for this purpose. But Congress must resist the temptation to turn these grants into earmarked pork-barrel programs and instead insist that federal support for border security policing be strategically employed as a short-term bridging program to secure the border immediately.
- **Data Sharing:** Section 304 allows the Social Security Administration to share "no-match" data with the Department of Homeland Security in order to aid workplace enforcement. Employers currently verify an employee's right to work by submitting a Social Security number for payroll tax purposes, but millions of the numbers submitted by employers on earnings reports do not match Social Security Administration master records. Immigration reform must allow sharing of Social Security no-match information in a way

that protects privacy rights while allowing DHS to target employers who intentionally violate the law by hiring illegal workers and giving the government incorrect information.

- **State and Local Enforcement Collaboration:** Section 221 and Section 225 reaffirm the importance of the 287 (g) program in facilitating cooperation between federal and state and local enforcement. Under current law, state and local police have the authority to arrest aliens for criminal and civil violations of law. Section 287 (g) of the Immigration and Nationality Act of 1996 allows the Department of Homeland Security and state and local governments to enter into assistance compacts. State and local law enforcement officers governed by a Section 287 (g) agreement must receive training and operate under the direction of federal authorities. In return, they receive full federal authority to enforce immigration law, thereby shifting liability to the federal government and providing the officers with additional immunity when enforcing federal laws. This program has established strong protections for states and their law enforcement officers while allowing well-trained officers already on the ground to conduct immigration investigations. It also allows state and local governments to tailor programs to meet their unique circumstances and requirements. Building on Section 287 (g) is the best way to improve immigration enforcement by engaging state and local law enforcement.

Unnecessary and Arbitrary Requirements. Several components of the Senate legislation serve no purpose. Among them are:

- **Already-Authorized Programs:** Section 1 establishes border security requirements for personnel, surveillance technology, and border obstacles. These requirements simply reauthorize programs that have already been authorized by the Congress. In many cases, funds have already been appropriated and the Administration already has implementation plans in place. Thus, these measures would provide no additional border security.
- **A Focus on Inputs, Not Results:** The legislation's focus on inputs is misplaced. Over the past

10 years, the United States has tripled border spending and manpower, while border incursions have skyrocketed. An immigration bill should direct DHS to secure the border and give it the operational flexibility to achieve that objective, not try to gauge progress by measuring the deployment of assets to the border. The only measure that counts is the capacity of the government to reduce illegal border crossings.

Counterproductive Security Proposals. One part of the Senate's approach to improve immigration-law enforcement is likely to cause more trouble than it is worth. Title III of the act requires establishing an electronic eligibility verification system as a tool for workplace enforcement. This proposal is ill-conceived and a poor alternative to using existing authorities and systems to conduct workplace enforcement and increasing civil and criminal penalties for violations.

The proposed electronic employment eligibility verification system has four major problems:

1. Undocumented workers are not distributed uniformly throughout the economy. They are concentrated in a few sectors, including construction, agriculture, and some service industries. Saddling the entire economy with the costs of electronic verification makes no sense.
2. Given the often inaccurate and outdated data in Social Security Administration records, as well as the federal government's poor track record in implementing information technology programs, millions of Americans who have a legitimate right to work will have to deal with erroneous records. This would cause an unacceptable loss of productivity, totaling in the billions of dollars.
3. The program would give rise to legitimate privacy concerns. Both the government and employers would have access to massive databases of information.
4. Electronic verification of every single U.S. worker would be expensive. Not only would the infrastructure of building a technology system that could handle millions of transactions be expensive, but also providing training, insurance, oversight, and redress would take years to

implement and be incredibly expensive. Potentially over seven million employers would have to be enrolled in the program.

The Way Forward. Congress should recognize that its proposal would not improve border security. Fixing it will require major changes, including removing the amnesty provision, eliminating the requirement for an electronic employment eligibil-

ity verification system, and improving and rapidly implementing the temporary worker program.

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